Supreme Court, U.S.
FILED
AUG 29 2003
OFFICE OF THE CLERK

No. 02-1580

IN THE

Supreme Court of the United States

RICHARD VIETH, *et al.*,
Appellants,

v.

ROBERT C. JUBELIRER AND JOHN M. PERZEL, *et al.*,
Appellees.

On Appeal from the United States District Court for the Middle District of Pennsylvania

JOINT APPENDIX

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JURISDICTIONAL STATEMENT FILED APRIL 25, 2003
PROBABLE JURISDICTION NOTED JUNE 27, 2003

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Transcript of Proceedings Volume 2, *Vieth v. Pennsylvania*, No. 1:01-cv-02439-SHR (M.D. Pa. March 11, 2002, afternoon session) ..... JA 46

Transcript of Proceedings Volume 3, *Vieth v. Pennsylvania*, No. 1:01-cv-02439-SHR (M.D. Pa. March 12, 2002, morning session) ..... JA 138

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NOTICE

The following documents have been omitted in the printing of the Appendix. They may be found in the Appendix to the 02-1580 Jurisdictional Statement at the following pages:

APPENDIX A
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APPENDIX B
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APPENDIX C
Vieth v. Pennsylvania, Order and Opinion, 195 F. Supp. 2d 672 (M.D. 2002) 46a

APPENDIX D
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Amended Complaint 128a

APPENDIX G
Affidavit of Robert Priest, filed with Plaintiffs' Motion to Impose Remedial Districts, April 22, 2002 ..... 148a

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APPENDIX I
U.S. Congressional Districts - Southeast - Act 34 ..... 165a

APPENDIX I
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U.S. DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
(HARRISBURG)

CASE No. 1:01-cv-02439-SHR

Vieth, et al. v. Commonwealth of PA, et al.

Dec. 21, 2001	1	Complaint - for injunctive relief - redistricting the congressional districts.
Jan. 11, 2002	6	AMENDED complaint [1-1] adding Susan Furey; answer due 1/24/02 for Matthew J. Ryan, for Robert C. Jubelirer, for Richard - Filling, for Kim Pizzingrilli, for Mark S. Schweiker, for Commonwealth of PA
Jan. 23, 2002	21	ORDER by Judge Sylvia H. Rambo GRANTING plaintiffs' mtn for three judge panel [2-1]; The Chief Judge of the USCA for the 3rd Circuit is rqst'd to designate two other judges to serve as a three judge court in this matter
Jan. 24, 2002	22	ORDER by Judge Sylvia H. Rambo Evidentiary hearing before a 3-judge panel @ 10:00am on 2/11/02
Jan. 24, 2002	25	MOTION by defendant Robert C. Jubelirer, defendant Matthew J. Ryan to dismiss the amended complaint

Jan. 24, 2002	26	MOTION by defendant Commonwealth of PA, defendant Mark S. Schweiker, defendant Kim Pizzingrilli, defendant Richard Filling to dismiss the amended complaint
Jan. 25, 2002	28	MOTION by drafts Robert C. Jubelirer & Matthew J. Ryan to Abstain
Jan. 25, 2002	29	MEMORANDUM by drafts Robert C. Jubelirer & Matthew J. Ryan IN SUPPORT OF motion to Abstain [28-1]
Jan. 29, 2002	37	BRIEF by defendants Robert C. Jubelirer, Matthew J. Ryan IN SUPPORT of motion to dismiss the amended complaint [25-1]
Jan. 29, 2002	38	BRIEF by defendants Commonwealth of PA, Mark S. Schweiker, Kim Pizzingrilli and Commissioner IN SUPPORT of motion to dismiss the amended complaint [26-1]
Jan. 30, 2002	39	ORDER by Judge Sylvia H. Rambo GRANTING drafts' mtn for recon [33-1] of order dated 1/24/02 [22-2]; Evidentiary hearing re-sched'd for 9:30am on 3/11/02; Plaintiffs shall provide drafts w/their list of expert wtnses and supp statistics by 2/6/02; drafts shall provide plaintiffs w/their list of expert wtnses and supp. statistics by 2/13/02; all depos shall be conducted by 2/19/02; all motions in lim w/supp, brfs and/or rqsts for Daubert hrngs as

		to expert wtnses shall be filed by 2/22/02; brfng sched, for the pndng motions to dism. and to abstain are unchanged by this order
Feb. 5, 2002	40	BRIEF by plaintiffs Richard Vieth, Norma Jean Vieth, Susan Furey, IN OPPOSITION to motion to dismiss the amended complaint [26-1]; reply brief due 2/19/02, motion to dismiss the amended complaint [25-1]; reply brief due 2/19/02
Feb. 5, 2002	41	MEMORANDUM by plaintiffs Richard Vieth, Norma Jean Vieth, Susan Furey IN OPPOSITION motion to Abstain [28-1]; reply brief due 2/19/02
Feb. 8, 2002	42	REPLY BRIEF by defendants Robert C. Jubelirer, Matthew J. Ryan in support of motion to dismiss the complaint [25-1]
Feb. 8, 2002	43	REPLY BRIEF by defendants Robert C. Jubelirer, Matthew J. Ryan in support of motion to Abstain [28-1]
Feb. 8, 2002	46	REPLY BRIEF by defendants in support of motion to dismiss the amended complaint [26-1]
Feb. 21, 2002	58	ORDER by Judge Sylvia H. Rambo denying Drafts Matthew Ryan and Robert Jubelirer s motion to Abstain [28-1]; CONCURRING OPINION by Judge William H. Yohn, Jr.

Feb. 22, 2002 60 MOTION by defendants Robert C. Jubelirer, Matthew J. Ryan in limine to prohibit testimony concerning legislative process or motive

Feb. 22, 2002 61 MEMORANDUM by defendants Robert C. Jubelirer, Matthew J. Ryan IN SUPPORT OF motion in limine to prohibit testimony concerning legislative process or motive [60-1]

Feb. 22, 2002 62 MOTION by defendants Robert C. Jubelirer, Matthew J. Ryan in limine to exclude expert testimony by Larry Ceisler

Feb. 22, 2002 63 MEMORANDUM by defendants Robert C. Jubelirer, Matthew J. Ryan IN SUPPORT OF motion in limine to exclude expert testimony by Larry Ceisler [62-1]

Feb. 22, 2002 64 MOTION by defendants Robert C. Jubelirer, Matthew J. Ryan in limine to exclude testimony by Dr. Allan Lichtman

Feb. 22, 2002 65 MEMORANDUM by defendants Robert C. Jubelirer, Matthew J. Ryan IN SUPPORT OF motion in limine to exclude testimony by Dr. Allan Lichtman [64-1]

Feb. 22, 2002 66 MOTION by defendant Robert C. Jubelirer, defendant Matthew J. Ryan, House Republican Caucus to stay order denying mtn to quash and for protective order

Feb. 22, 2002 67 JOINDER by defendants Commonwealth of PA, Mark S. Schweiker, Kim Pizzingrilli, Richard - Filing joining memo of law in support motion in limine to prohibit testimony concerning legislative process or motive [60-1]

Feb. 22, 2002 68 JOINDER by defendants Commonwealth of PA, Mark S. Schweiker, Kim Pizzingrilli, Richard - Filling joining memo of law re motion in limine to exclude testimony by Dr. Allan Lichtman [64-1]

Feb. 22, 2002 69 JOINDER by defendants Commonwealth of PA, Mark S. Schweiker, Kim Pizzingrilli, Richard Filling joining memo of law re motion in limine to exclude expert testimony by Larry Ceisler [62-1]

Feb. 22, 2002 73 OPINION by Judge Sylvia H. Rambo

Feb. 22, 2002 74 ORDER by Judge Rambo, Judge Yohn, and Judge Nygaard - IT IS HEREBY ORDERED THAT: 1) Dft Executive Officers' mtn to dism pursuant to Rule 12(b)(1) is GRANTED IN PART and DENIED IN PART as follows: a) As to dff Commonwealth of PA, the mtn is GRANTED, all clms against the Commonwealth are dismissed; b) In all other respects, the mtn is DENIED. 2) Dft Presiding Officers' mtn to dism pursuant to Rule 12(b)(1) is DENIED; 3) Dft Executive Officers' mtn to dism pursuant to Rule 12(b)(6) is GRANTED

IN PART and DENIED IN PART as follows: a) The mtn is GRANTED as to Counts II, III, IV, and V of the amdcmp; b) The mtn is DENIED as to Count I of the amdcmp. 4) Dft Presiding Officers' mtn to dismpursuant to Rule 12(b)(6) is GRANTED IN PART and DENIED IN PART, as follows: a) The mtn is GRANTED as to Counts II, III, IV, V of the amdcmp; b) The mtn is DENIED as to Count I of the amdcmp [26-1]

Feb. 25, 2002 76 MOTION by plaintiffs for reconsideration of order dated 02/22/02 that granted in part and denied in part the Drafts' mtn to dismiss [74-1]

Feb. 25, 2002 77 MEMORANDUM by plaintiff IN SUPPORT OF motion for reconsideration of order dtd 2/22/02 that granted in part and denied in part the Drafts' mtn to dismiss [74-1] [76-1]; with exhibit and c/s

Feb. 26, 2002 78 ORDER by Judge Sylvia H. Rambo - IT IS HEREBY ORDERED THAT: Plaintiffs' mtn for clarification and/or reconsideration is DENIED [74-1] [76-1]

Feb. 26, 2002 82 BRIEF by plaintiffs IN OPPOSITION to motion in limine to prohibit testimony concerning legislative process or motive [60-1]; reply brief due 3/11/02

Feb. 26, 2002 83 MEMORANDUM by plaintiffs IN OPPOSITION motion in limine to exclude testimony by Dr. Allan Lichtman [64-1]; reply brief due 3/11/02

Feb. 27, 2002 87 MEMORANDUM by plaintiffs IN OPPOSITION to the mtn inlim to exclude expert testimony by Larry Ceisler [62-1]; reply brief due 3/12/02; with exhibits and c/s

Feb. 28, 2002 90 REPLY BRIEF by Presiding Officers Robert C. Jubelirer & Matthew J. Ryan in support of motion in limine to prohibit testimony legislative process or motive [60-1]; with exhibits and c/s

Mar. 1, 2002 91 MEMORANDUM by Judge Sylvia H. Rambo re. mtn in lim to prohibit tstmny concerning legislative process or motive

Mar. 1, 2002 92 ORDER by Judge Sylvia H. Rambo DENYING dfls' mtn in lim to prohibit testimony concerning legislative process or motive [60-1]

Mar. 6, 2002 101 MINUTE SHEET from evidentiary hrng; Witness activity list attached; time cmnc'd 9:28am; time termed 3:35pm; Court opens w/all prsnt; Judge makes opening rmks and rules on mtns for: Bifurcation [94-1], Denied, and pltfs' mtn to w/d mtn to set ddls [18-1], Denied; Dfts have burden and call wtns's re

their mtn in lim [64-1]; pltfs rspnd; Dfts call wtnses re their mtn in lim [62-1]; pltfs call wtns's; concluding argumnts. Matter taken under advisement

Mar. 6, 2002 102 EXHIBIT LIST by plaintiffs from evidentiary hrng held 3/6/02

Mar. 6, 2002 103 EXHIBIT LIST by defendants from evidentiary hrng held 3/6/02

Mar. 7, 2002 107 TRANSCRIPT filed of the Daubert Hearing held in front of Judge Rambo on 3/6/02

Mar. 7, 2002 108 TRANSCRIPT filed of Daubert Hearing held in front of Judge Rambo on 3/6/02

Mar. 8, 2002 109 ANSWER by defendants Mark S. Schweiker and Richard Filling to the amended complaint

Mar. 8, 2002 110 ANSWER and Defenses filed by Robert C. Jubelirer & Matthew J. Ryan

Mar. 11, 2002 111 TRIAL BRIEF submitted by plaintiffs

Mar. 11, 2002 114 MINUTE SHEET from Day #1 of evidentiary hrng ; time cmnc'd 9:30am, time trm'd 4:41pm; Court opens; J. Nygaard makes opening rinks. Plaintiffs make opening stmnt and call wtnses; Lichtman moved and admt'das an expert; Court adjourns until 8:30am on 3/12/02. Wtns activity list attch'd

Mar. 12, 2002 115 MINUTE SHEET from Day #2 of evidentiary hrng; time cmnc'd 8:30am, time trm'd 3:45pm; Court opens w/all present; J. Nygaard makes opening rmks; plaintiffs' wtns's continue; plaintiffs rest; Drafts call wtns's; Brunell moved and admt'd as expert in quantitative political science; Hallowel moved and admt'd as expert in political cnsltng; drafts rest; court adjourns. Wtns activity list attch'd

Mar. 12, 2002 116 EXHIBIT LIST by plaintiffs from evidentiary hrng held on 3/11/02 and 3/12/2002

Mar. 12, 2002 117 EXHIBIT LIST by defendants from evidentiary hrng held on 3/12/02 and 3/11/02

Mar. 13, 2002 113 TRANSCRIPT filed of reapportionment nonjury trial held on 3/11/02. VOLUME I (Pages 1 through 107)

Mar. 14, 2002 120 TRANSCRIPT of reapportionment non-jury trial, Volume 2, pgs 108-219, taken 3/11/02

Mar. 14, 2002 121 TRANSCRIPT filed of proceedings reapportionment nonjury trial on 3/12/02 vol. 3 before J. Rambo, Hon. William Yohn, jr., and Hon. Richard Nygaard

Mar. 14, 2002 122 TRANSCRIPT filed of proceedings reapportionment nonjury trial before J. Rambo,Hon.Richard Nygaard, Hon. William Yohn on 3/12/02 vol. 4

Mar. 15, 2002 123 POST TRIAL BRIEFS submitted by plaintiffs

Mar. 15, 2002 124 PROPOSED FINDINGS OF FACT and CONCLUSIONS OF LAW filed by plaintiffs

Mar. 15, 2002 125 POST-HEARING TRIAL BRIEFS submitted by drafts Robert C. Jubelirer & Matthew J. Ryan

Mar. 15, 2002 126 PROPOSED FINDINGS OF FACT and CONCLUSIONS OF LAW filed by drafts Robert C. Jubelirer & Matthew J. Ryan

Mar. 15, 2002 127 JOINDER by drafts Mark S. Schweiker, Secretary Weaver & Richard Filling n the presiding Officers' Proposed Findings of Fact and Conclusions of Law and Post Hearing Brief

April 8, 2002 136 OPINION by Judge Sylvia H. Rambo and U.S. Circuit Judge Richard L. Nygaard: Having determined that Act 1 is unconstitutional, we now address question of appropriate remedy. Drafts are ordered to submit a constitutionally sound redistricting plan that has been enacted into law by the Commonwealth of Pennsylvania to this court w/i three weeks of date of this opinion. See opinion for further details. An appropriate order will follow. (cc: all counsel, District Judge Rambo, Circuit Judge Nygaard, District Judge Yohn, publishers)

April 8, 2002 137 ORDER by Judge Sylvia H. Rambo and Circuit Judge Nygaard In accordance w/preceding opinion, IT IS HEREBY ORDERED THAT: (1) Plaintiffs' request for declaratory jgm is GRANTED. Act 1 is hereby declared unconstitutional as a violation of Article I, of the United States Constitution; (2) Plaintiffs' request for injunctive relief is GRANTED IN PART as follows: (A) To extent that Plaintiffs request that court enjoin Act 1's implementation, Plaintiffs' request is GRANTED. Drafts are permanently enjoined from implementing Act 1; (B) To extent that Plaintiffs request that court devise its own redistricting plan for use in 2002 congressional elections, Plaintiffs' request is deferred pending compliance by the Pennsylvania General Assembly w/this order; and instead, (3) The Pennsylvania General Assembly shall, w/i three weeks of date of this order, prepare, enact and submit for review and final approval by this Court, a congressional redistricting plan in conformity w/this opinion. This Court shall retain jurisdiction pending issuance of a final order in this matter. IT IS SO ORDERED.

April 8, 2002 138 OPINION by Judge Yohn, Dissenting: I agree w/majority that plaintiffs have met the first prong of Karcher test and that the appropriate remedy, if Act 1 is unconstitutional, is to give the Commonwealth of Pennsylvania a reasonable period of time to enact a

constitutionally sound redistricting plan. I respectfully dissent, however, from Section II.B. of the majority opinion and conclude that drafts have met their burden, although just barely, to establish a justification for the nineteen person maximum deviation, and that Act 1 therefore passes constitutional muster. I conclude that the nineteen person deviation was justified by the "legitimate state objective" of avoiding further splitting of voter precincts and that there has been no proof that the population deviation of nineteen persons bore any relationship to the alleged partisanship of Act 1. Thus, Act 1 is not unconstitutional. See document for further details.

April 11, 2002 139 NOTICE OF APPEAL by Drafts Robert C. Jubelirer, Matthew J. Ryan, to Supreme Court of the United States from District Court order filed 4/8/02 in this matter, which declared Act 1 of 2002 unconstitutional and permanently enjoined its implementation. Appeal is taken pursuant to 28 USC 1253 [137-1]

April 11, 2002 140 MOTION by Drafts Robert C. Jubelirer, Matthew J. Ryan for stay, pending appeal of order granting declaratory judgment and injunction and for expedited consideration

April 11, 2002 141 MEMORANDUM by Drafts Robert C. Jubelirer, Matthew J. Ryan IN SUPPORT OF motion for stay, pending appeal of order granting declaratory judgment and injunction and for expedited consideration [140-1]

April 11, 2002 142 NOTICE OF APPEAL of Drafts Governor Mark S. Schweiker, Secretary C. Michael Weaver, and Commissioner Richard Filling to Supreme Court of the United States from District Court order filed 4/8/02 in this matter, which declared Act 1 of 2002 unconstitutional and permanently enjoined its implementation. Appeal is taken pursuant to 28 USC 1253 [137-1]

April 11, 2002 143 JOINDER by Drafts Governor Schweiker, Secretary Weaver and Commissioner Filling joining in Presiding Officers' expedited motion for stay, pending appeal of order granting declaratory judgment and injunction and for expedited consideration, and Executive Officers' Memorandum of Law supporting a stay [140-1]

April 12, 2002 144 ORDER by Judge Sylvia H. Rambo denying motion for stay, pending appeal of order granting declaratory judgment and injunction and for expedited consideration [140-1]

April 18, 2002 147 RENEWED MOTION by defendants Robert C. Jubelirer and Matthew J. Ryan for stay, pending appeal, of order granting declaratory judgment and injunction and for expedited consideration with cert of cone and noncone, proposed order

April 18, 2002 148 MEMORANDUM by defendants Robert C. Jubelirer and Matthew J. Ryan IN SUPPORT OF motion for stay, pending appeal, of order granting declaratory judgment and injunction and for expedited consideration [147-1]

April 22, 2002 149 MOTION with BRIEF IN SUPPORT by Senator Robert J. Mellow for leave to participate as amicus curiae with proposed order

April 22, 2002 150 MOTION by plaintiffs to impose remedial districts and, in the alternative, to reject Act 34 and begin remedial hearings with attachments

April 22, 2002 151 BRIEF by plaintiffs IN OPPOSITION to motion for stay, pending appeal, of order granting declaratory judgment and injunction and for expedited consideration [147-1] reply brief due 5/6/02

April 22, 2002 152 MOTION to intervene Casey for Governor Committee, Rendell for Governor Committee and Pennsylvania Democratic Party with exh. attached, proposed order

April 22, 2002 153 MEMORANDUM by Casey for Governor Committee, Rendell for Governor Committee and Pennsylvania Democratic Party IN SUPPORT OF motion to intervene [152-1]

April 22, 2002 154 ORDER by Judge Sylvia H. Rambo IT IS ORDERED THAT Intervenor Tom Lingenfelter's complaint in intervention is construed by the court as a mtn to intervene pursuant to Rule 24 and is denied [146-1]

April 23, 2002 155 ORDER by Judge Sylvia H. Rambo IT IS ORDERED THAT defendants' renewed mtn for stay pending appeal of order granting declaratory judgment and injunction is GRANTED, as follows: 1) Upon consideration of defendants' renewed mtn for a stay, the stay is GRANTED. Defendants will be allowed to conduct only the 2002 Congressional elections using Act 1; [147-1] 2) A hearing is scheduled for the purpose of determining whether Act 34 suitably remedies the constitutional violation found by this court in its order of 4/8/02. Said hearing shall occur at 9:30 a.m. on 5/8/02, in Courtroom No. 2, Ninth Floor

April 23, 2002 156 ORDER by Judge Sylvia H. Rambo IT IS ORDERED that the joint motions for intervention filed on behalf of the Casey for Governor Committee, the Rendell for Governor Committee, and the PA Dmocratic Party are DENIED AS MOOT [152-1]

April 23, 2002 157 ORDER by Judge Sylvia H. Rambo IT IS ORDERED THAT Senator Robert J. Mellow's mtn for leave to file an amicus curiae brief is granted [149-1]

April 23, 2002 158 NOTICE OF APPEAL by plaintiffs from the Order entered in this matter on 2/22/02 dismissing plaintiffs' amended complaint for declaratory and injunctive relief insofar as it raised claims of impermissible partisan gerrymandering

April 29, 2002 160 Copy of LETTER to John Krill from the U.S. Supreme Court stating that the application for a stay of injunction pending appeal was dismissed by Justice Souter on 4/23/02

April 29, 2002 161 ORDER by Judge Sylvia H. Rambo: Dfls' shall file w/clerk a separate copy of Act 34 along w/a color copy of corresponding map

May 1, 2002 162 BRIEF (Captioned: Response) by drafts Robert C. Jubelirer & Matthew J. Ryan IN OPPOSITION to motion to impose remedial districts and, in the alternative, to reject Act 34 and begin remedial hearings [150-1]; reply brief due 5/14/02

May 1, 2002 163 JOINDER by drafts Schweiker, Weaver & Filling joining in the presiding officers' Opposition to plaintiffs' motion to impose remedial districts and, the alternative, to reject Act 34 and begin remedial hearings [150-1]

May 3, 2002 167 MOTION by Tom Lingenfelter-candidate for US Congress in the 8th Congressional District in Commonwealth of PA to intervene pursuant to FRCP24(a) and (b)

May 3, 2002 168 MOTION by Tom Lingenfelter for a partial stay of order dtd. 4/23/02 granting defendants permission to conduct the 2002 Congressional Primary Elections Using Act 1 which has been found unconstitutional

May 6, 2002 170 MOTION by Senator Robert J. Mellow for leave to intervene or, in the alternative, to participate as amicus curiae

May 6, 2002 171 MEMORANDUM by Senator Robert J. Mellow IN SUPPORT OF motion for leave to intervene or, in the alternative, to participate as amicus curiae [170-1]

May 6, 2002 172 BRIEF FILED by Senator Robert J. Mellow in support of Senate Democrats' Proposed Redistricting Plan

May 8, 2002 174 ORDER by Judge Sylvia H. Rambo DENYING Lingenfelter's motions for a partial stay of order dtd. 4/23/02 [168-1] and to intervene pursuant to FRCP24(a) and (b) [167-1]

May 20, 2002 177 RESPONSE by drafts Robert C. Jubelirer & Matthew J. Ryan

May 20, 2002 178 JOINDER filed by Mark S. Schweiker, Weaver & Richard Filling joining in the Response ofdrafts Jubelirer and Ryan to Mellow's mtn to intervene

May 30, 2002 180 REPLY BRIEF by amicus Senator Robert J. Mellow in support of motion for leave to intervene or, in the alternative, to participate as amicus curiae [170-1]

June 3, 2002 181 WRITTEN STATUS REPORT by Robert C. Jubelirer, Matthew J. Ryan

June 3, 2002 182 WRITTEN STATUS REPORT by defendants Commonwealth of PA, Mark S. Schweiker, Kim Pizzingrilli, Richard Filling

June 18, 2002 185 RESPONSE by Senator Robert J. Mellow to drafts' status reports

June 19, 2002 186 ORDER by Judge Sylvia H. Rambo; Stat report due by 8/19/02 re. the dispute over the order issued by the court of common pleas for Armstrong county on 3/15/02 addressing the following issues: A) if the matter has been resolved, has the line separating the South Buffalo Twnshp election district from the Eastern Buffalo Twnshp election district been restored to its original configuration prior to the Armstrong county order? B) If the line has not been restored, did the Armstrong County

order result in a movement of population between congressional districts? C) If the line drawn by the Armstrong County order resulted in a movement of population between congressional districts, how many people have been moved? D) If the Armstrong County order issue has not been resolved, are Drafts pursuing the matter through litigation? 2) Plaintiffs shall file by any obj's to drafts' sumbission with the court by 9/3/02

June 19, 2002 187 RESPONSE by plaintiffs to drafts' Status Report regarding Act 34's Population Deviation

Aug. 19, 2002 192 SECOND STATUS REPORT by defendants Robert C. Jubelirer, Matthew J. Ryan

Aug. 19, 2002 193 MOTION by defendants Robert C. Jubelirer, Matthew J. Ryan to add Board of Elections of Armstrong County as a necessary party to the action; propo, certconcurr/noncurr

Aug. 19, 2002 194 MEMORANDUM by defendants Robert C. Jubelirer, Matthew J. Ryan IN SUPPORT OF motion to add Board of Elections of Armstrong County as a necessary party to the action [193-1]

Aug. 19, 2002 195 SECOND STATUS REPORT by defendant Commonwealth of PA

Sept. 9, 2002	198	RESPONSE by amicus Senator Robert J. Mellow to drafts' second status reports
Sept. 9, 2002	199	JOINDER by amicus Senator Robert J. Mellow joining in plaintiffs' response to drafts' motion to add Board of Elections of Armstrong County as a party to the action [193-1]
Sept. 9, 2002	201	RESPONSE by plaintiffs to drafts' Second Status Reports regarding Act 34's Population Deviation; with c/s
Sept. 10, 2002	200	RESPONSE by plaintiffs to dfls' Mtn to Add Necessary Party
Sept. 13, 2002	202	ORDER by Judge Sylvia H. Rambo DENYING drafts' mtn to add Board of Elections of Armstrong County as a necessary party to the action [193-1]; GRANTING IN PART AND DENYING IN PART Senator Mellow's mtn for lv to intervene or, in the alternative, to participate as amicus curiae [170-1] as flws: As to Sen. Mellow's mtn to intervene, the mtn is DENIED; As to Sen. Mellow's alternative mtn to participate as amicus curiae, the mtn is GRANTED; Clerk shall STRIKE clmpt in intervention [173-1]; Oral Argument re. constitutionality of Act 34 set for 1:30pm on 10/15/02

Sept. 13, 2002	203	REPLY by drafts Robert C. Jubelirer & Matthew J. Ryan to Mtn to Add Necessary Party [193-1]
Sept. 13, 2002	204	JOINDER by drafts Mark S. Schweiker, Weaver & Richard Filling joining in the Reply to Plaintiffs' Response to Mtn to Add Necessary Party
Oct. 4, 2002	210	MOTION by Presiding Officers' Robert C. Jubelirer & Matthew J. Ryan for leave to Present Evidence at heating; with cert. of non-conc
Oct. 4, 2002	211	MEMORANDUM by Presiding Officers' Jubelirer and Ryan IN SUPPORT OF motion for leave to Present Evidence at hearing [210-1]
Oct. 4, 2002	212	JOINDER MEMORANDUM by drafts Mark S. Schweiker, Weaver & Richard Filling in the Presiding Memorandum in Support of their Mtn to Offer Evidence [211-1]
Oct. 17, 2002	217	BRIEF by plaintiffs IN OPPOSITION to mtn for leave to Present Evidence at hearing [210-1]; rplybr due 10/30/02

Nov. 7, 2002	222	ORDER by Judge Sylvia H. Rambo; 1) DENYING Sen. Mellow's mtn to stay [213-1]; 2) GRANTING IN PART AND DENYING IN PART drafts' mtn to Present Evidence at hearing [210-1] as follows: A) Drafts will be allowed to present the following evidence at the hrng: (i) An afdvt from K. Sullivan including documentation of the population database; (ii) Cert. copies fo the Armstrong cnty crt docket in #2002-00081 and the does reflected in the docket entries; (iii) Copies of the legislative journals for the Senate and House from 4/15 and 17, 2002; and (iv) Copies of the biography of Congressmen J. Murtha appearing on his official website on 10/4/02. B) Dfls will not be allowed to present the afdvt ofJ. Scahill. 3) Oral Argmnt set for 01/09/03 @ 10:00 am (cc: all counsel, court, Judges, crtrptr))
Nov. 13, 2002	224	CERTIFIED COPY of U.S. Supreme Court Order: dismissing the appeal [139-1] (Jubelirer and Ryan vs. Vieth) as moot
Dec. 19, 2002	227	PRE-TRIAL MEMORANDUM submitted by plaintiffs
Dec. 20, 2002	228	PRESIDING OFFICERS' MOTION by defendants Robert C. Jubelirer, Matthew J. Ryan for summary judgment

Dec. 20, 2002	229	MEMORANDUM by defendants Robert C. Jubelirer, Matthew J. Ryan IN SUPPORT OF motion for summary judgment [228-1]
Dec. 20, 2002	230	PRESIDING OFFICERS' STATEMENT OF MATERIAL FACTS by defendants Robert C. Jubelirer, Matthew J. Ryan in support of motion for summary judgment [228-1]
Dec. 20, 2002	232	JOINDER by Governor Mark S. Schweiker, Secretary Weaver, Commissioner Richard Filling joining in Presiding Officers' memorandum in support of motion for summary judgment [228-1]
Dec. 30, 2002	233	ORDER by Judge Sylvia H. Rambo; 1) Hmg re. Act 34 to take place on 1/9/03 @ 10:00 as sched'd. 2) Plaintiffs bropp to drafts' mtn for s/j [228-1] is due by 1/7/03.3) Parties should be prepared to present oral argument on drafts' mm for s/j at the hrng. (cc: all counsel, court, Judges) (ma) Modified on 12/30/2002
Jan. 3, 2003	235	SUPPLEMENTAL MEMO IN SUPPORT re motion for summary judgment of Presiding Officers [228-1]
Jan. 7, 2003	236	MEMORANDUM by amicus Senator Robert J. Mellow IN OPPOSITION to Presiding Officers' mtn for sumjgm [228-1] with cert of compliance with LR7.8(b)(2)

Jan. 7, 2003 237 MEMORANDUM by amicus Senator Robert J. Mellow in response to drafts Schweiker, Weaver and Filling's joinder in the memsup [229-1] of Presiding Officers' mtn for sumjgm [228-1]

Jan. 7, 2003 238 RESPONSE by amicus Senator Robert J. Mellow to Presiding Officers' stmnt of mat. fcts [230-1] in sup. of mtn for sumjgm. [228-1]

Jan. 7, 2003 240 RESPONSE by plaintiffs to stmnt of mat. fcts [230-1] re. mtn for sumjgm [228-1]

Jan. 8, 2003 242 BRIEF by plaintiffs IN OPPOSITION to drafts' mtn for sumjgm judgment [228-1]; reply brief due 1/21/03

Jan. 9, 2003 243 REPLY BRIEF by Presiding Officers Robert C. Jubelirer, Matthew J. Ryan and Amicus in support of motion for summary judgment [228-1]

Jan. 9, 2003 244 REPLY BRIEF by Executive Officers Mark S. Schweiker, Richard Filling and Weaver in support of motion for sumjgm [228-1]

Jan. 24, 2003 246 OPINION AND ORDER OF THE COURT by Judge Sylvia H. Rambo re. plaintiffs' mtn to impose remedial districts and drafts' mtn for s/j

Jan. 24, 2003 247 ORDER by Judge Sylvia H. Rambo DENYING drafts' mtn for s/j [228-1] and DENYING AS MOOT plaintiffs' mtn to impose remedial districts and, in the alternative, to reject Act 34 and begin remedial hearings [150-1]; the congressional redistricting plan contained in Act 34 is given final approval Clerk of court is directed to enter judgment in favor of drafts and against plaintiffs. (cc: all counsel, court, orig to security)

Jan. 24, 2003 249 JUDGMENT by Judge Sylvia H. Rambo in favor of the defendants and against the plaintiffs. (cc: all counsel, court, orig to security)

Feb. 24, 2003 254 NOTICE OF APPEAL by plaintiff from District Court order & jgm filed 1/24/03 [247-1] [249-1] (Filing fee paid, TPO given) Email with attachments to USCA. (cc: Not/app w/info/ack ltr to cnsl, C/R, Ct.) Receipt No. & Amt: 111 [illegible]8202 $105.00 (sc)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, et al.,
Plaintiffs

v. NO: 1:CV-01-2439

THE COMMONWEALTH OF
PENNSYLVANIA,
Defendants

TRANSCRIPT OF PROCEEDINGS

REAPPORTIONMENT NONJURY TRIAL

VOLUME 1
(Pages 1 through 107)

BEFORE: HON. RICHARD L. NYGAARD, Judge
HON. WILLIAM H. YOHN, JR., Judge
HON. SYLVIA H. RAMBO, Judge
DATE: March 11, 2002, morning session
PLACE: Courtroom Number Three
Federal Building
Harrisburg, Pennsylvania

COUNSEL PRESENT:
PAUL M. SMITH, Esquire
BRUCE V. SPIVA, Esquire
DANIEL MACH, Esquire
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J. BART DELONE, Esquire
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Secretary and Commissioner Filling

Vicki L. Fox, RMR
Official Reporter

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MR. KRILL: We will have one more. I also referenced Exhibit 53.
JUDGE NYGAARD: Which one?
MR. KRILL: 53 which is the certification of the enrolled bill which constitutes Act 1 of 2002.
MR. SMITH: No objection, Your Honor.
JUDGE NYGAARD: It is admitted. You may call your next witness.

MR. SMITH: Plaintiffs call Professor Allan Lichtman.

ALLAN LICHTMAN, called as a witness, being duly sworn, testified as follows:

THE CLERK: Would you state your name, please?

A Allan J. Lichtman.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. SMITH:

Q Professor Lichtman, where are you employed?

A I am a full Professor of History at American University in Washington, D.C.

Q How long have you been employed at American University?

A I have been employed there since 1973. I have been a Full Professor for more than twenty years.

(Daubert Hearing Exhibit was introduced as Plaintiffs Exhibit 5.)

BY MR. SMITH:

Q Let me ask you to refer in the book to Plaintiff Exhibit 5. I ask you whether this is your current curriculum vitae.

A Yes, it is.

MR. SMITH: I move the admission of Exhibit 5, Your Honor. I

MR. KRILL: No objection.

JUDGE NYGAARD: Admitted.

(Plaintiffs Exhibit was admitted into evidence.)

BY MR. SMITH:

Q Professor Lichtman, what areas of scholarship do you

focus on?

A I would say focus on three areas of scholarship. One is the study of political history and political systems using both traditional historical methods and methods of quantitative analysis.

The second area would be the quantitative or statistical study itself of political information. And a third area would be the application of quantitative and social science methods to issues involved in voting rights.

Q Have you published in scholarly journals in those areas?

A I published in scholarly journals. I have published in scholarly series, and I published scholarly books in all of those areas.

MR. KRILL: Your Honor, his CV is in evidence. I will waive voir dire.

MR. SMITH: I will continue on very briefly, Your Honor, just to elaborate.

BY MR. SMITH:

Q Have you testified as an expert before, Dr. Lichtman?

A Yes. I have worked as an expert in some 60 or more redistricting and voting rights case.

Q Can you give us some examples of organizations that have retained you to appear as an expert witness in redistricting and voting rights cases?

A Yes. I have worked for some twelve to fifteen times in cases for the United States Department of Justice. I have worked for numerous civil rights organizations including among others the NAACP, the LDF, MALDEF, Mexican American Legal Defense and Education Fund, the Lawyers' Committee for Civil Rights and the Law, the Southern Poverty Law Center.

I have worked for a number of state and local governments. I have worked for nonpartisan redistricting commissions. I have worked for both Democratic and Republican interests; although, I am more often for Democratic interests.

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I have worked for both plaintiffs and defendants in voting rights and redistricting matters.

Q Are you familiar with various methods of assessing statistically the partisan fairness of redistricting plans?

A I am.

Q Have you offered testimony on that subject in prior cases?

A I have. Both in the post round of redistricting and in the current round of redistricting, I have offered such testimony.

MR. SMITH: Your Honor, I would offer Dr. Lichtman as an expert in quantitative methods in the analysis of political systems.

JUDGE NYGAARD: I take it from your waiver, you have no objection? Granted.

BY MR. SMITH:

Q Professor Lichtman, what question were you asked to address in this case?

A I was asked to address the question of the partisan fairness of the Act 1 Plan with respect to Republicans and Democrats and also to compare the partisan fairness of the Act 1 plan to alternative plans that were presented to me.

Q And what methodologies did you use to answer those questions?

A I used a series of methodologies to explore the issue

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of partisan fairness.

Q Can you tell us the first one?

MR. KRILL: Excuse me Your Honor, just to make sure the record is clear on this, I will object to the relevance of Dr. Lichtman's testimony. I didn't think partisan fairness is an issue for the Court.

JUDGE NYGAARD: Overruled.

A The first method that I used is what is called a seats votes comparison. That is I compared across all districts of a plan, the relative strength of Republicans and Democrats to see how for the whole state the Republican strength compared to the Democratic strength.

I then compared that overall partisan division between Republicans and Democrats to the partisan divisions in each of the individual districts within the plan.

For example under this analysis, if the partisan strength of the two parties across all districts for the whole state is divided 50/50 by some measure of partisan strength, then under a fair plan, a plan that treated the parties the same, you would expect each party to have a majority in 50 percent of the individual districts.

To the extent the division of the districts departs from 50/50, then the plan is tilted or biased in favor of one or the other parties.

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BY MR. SMITH:

Q What mechanisms in drawing district lines would make it possible for a party to get more than fifty percent of the seats with only fifty percent of the votes?

A These are essentially the same mechanisms that I have written about in the literature that are used to diminish the opportunities for minorities to elect candidates of their choice. So too, they can used to diminish the opportunity of Republican or Democratic voters to elect candidates of their choice.

The first method is known as packing. That is where you very heavily concentrate the voters of one party into a relatively small number of districts. You concentrate them at levels far beyond what is necessary to elect candidates of their choice; thus in effect, wasting votes that could be allocated to other districts that would give voters of that party the opportunity to elect candidates of their choice in those other districts.

The second mechanism is kind of the opposite. It is known as cracking or fracturing. That is where you take concentrations of Democratic or Republican voters and split them up. So while they might have a significant presence in a number of districts, the majority in those districts is held by the opposition party.

Either or both of those mechanisms can produce

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this disparity that we have been referring to; that is a difference between the 50/50 overall strength of the parties across all districts and the number of majority districts allocated to each party.

Q Doctor, what data did you use to measure the seats votes relationship?

A In measuring the seats votes relationship, it is very important to have data that is independent of the drawing of the lines itself so you can test the effects of the drawing of the lines on the seats votes relationship.

So you want data that has the same voters in the same elections both before and after the redistricting. So the data I chose was all statewide elections held at the same year and the same time as Congressional elections.

There were such elections from 1992 to 2000. In addition, I added one additional election which was a 1991 special election for a position in the Congress. It was a 1991 election for a place in the United States Senate.

So my data base consisted in toto of 19 statewide elections held over the ten year period from 1991 to 2000 with 18 of them coming at the same time as the Congressional elections.

Q Referring quickly to Exhibit 13 in the book, is this the source of the election data that you used?

A Yes, it is.

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Q Did you consider the alternative of using Congressional election results as the basis for your testing the effects of the various district maps?

A I did.

Q Can you tell us why you chose not to do that?

A As I said, you need a yardstick or a test that is independent of the drawing of the lines themselves so you can isolate the drawing of the lines. Congressional elections do not meet that test because the new Congressional Districts are composites that consist of two or more previous Congressional Districts.

So when you allocate the votes from previous Congressional elections into the new Congressional Districts, you are allocating bits and pieces of different elections. Some Congressional elections in Pennsylvania are entirely uncontested so you would be adding in a hundred percent and

zero percents. Some are only lightly contested. Many are affected by incumbency. So you are adding together into the new districts very different previous Congressional elections which may not accurately reflect the underlying partisan composition of the new districts.

With statewide elections, you have same voters, same elections before and after the drawing of the lines. You are isolating the effects of the drawing of the lines themselves. With Congressional elections, the results are

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contaminated by adding together these bits and pieces.

(Lichtman's Tables were introduced as Plaintiffs Exhibit 12.)

BY MR. SMITH:

Q Now, Doctor, just to identify it let me ask you to look back at Exhibit 12 and tell us what that is.

A That is a series of tables that I prepared.

Q That reflect the results of your analysis?

A To reflect all of the multiple levels analyses that I performed.

Q Okay. Let me ask you to refer to page one, Table 1 of Exhibit 12and ask you if you can use that to explain the results of your analysis of the seats votes relationship with respect to the Act 1 Plan?

A Yes. Table 1 is not limited to a seats votes analysis. It contains other information. However, we can't isolate the seats votes analysis within Table 1.

Table 1 looks at the relationship between seats and votes for the 19 statewide elections both for the 1992 Plan and for the Act 1, the enacted plan.

Q What do you call the Act 1 Plan on this table?

A I think it is called the Conference Plan on this

table. At the time it was prepared, I used that term, but it is the Act 1 Plan.

If you look at the bottom row of the table, it has

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both for the existing plan and for the Act 1 Plan the overall percentage strength of Democrats and Republicans across all of the Congressional Districts.

And what the table shows is that across all districts statewide, the two parties are evenly divided over this ten year period for these elections with approximately fifty percent of the vote going for Democrats and approximately fifty percent going to Republicans.

Under those circumstances, if the plan was absolutely equivalent for Republicans and Democrats, then you would expect about half of the districts to have in them a Democratic majority on average across the 19 elections and half of the districts to have in them across 19 elections a Republican majority.

So that the 50/50 strength of the parties across all districts would be reflected in the individual districts, and there wouldn't be this phenomena of packing and cracking.

When in fact you look at the individual district results, they do not however conform to the 50/50 pattern. In the existing plan, more districts have a Republican majority across the elections than have a Democratic majority. Twelve of the districts as indicated on the bottom row have a Republican majority, and nine of the districts have a Democratic majority.

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Likewise, when you look at the enacted plan, you find that there is also a disparity between Republicans and Democrats, but a significantly greater disparity. For the enacted plan, 14 of the districts have a Republican majority across on average on 19 elections and only five districts have a Democratic majority.

In other words, although the vote across all districts is relatively evenly divided between the two parties, Republicans have a majority individually in 74 percent of the districts, 14 out of 19.

Thus we can quantitatively assess the departure from what we call partisan symmetry or equality, the 50/50 mark. The Act 1 Plan is biased in favor of Republicans by four and one-half districts, and it is biased in favor of Republicans by 24 percent. That is they have 74 percent of the districts rather than 50 percent as measured by our 19 election average.

Q Dr. Lichtman, were in the courtroom for Mr. Priest's testimony?

A Yes, I was.

Q Did you hear the testimony about the differentials between county by county election returns and precinct by precinct election returns?

A I did.

Q Do you have an opinion about the significance of those

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differentials with respect to the analysis that you presented here?

A Yes. There is no significance whatever on average. Even if you assume -- and this is not true -- all of the

variance favor the Democrats, even if you assume that, on average the variance is less than one-tenth of one percent, far too small to have any impact, whatsoever, on this analysis.

Even if you moved all these numbers by the average, it would have no impact at all. You would reproduce exactly the same conclusions even under the assumption that all the variants went in one direction when in fact it doesn't. You got a 14/5 allocation.

Q Let me ask you to turn to Table . First of all, Table deals with which plan?

A Table 3 deals with the plan labeled Alternative 3.

Q What does it show about the seats vote relationships in Alternative 3?

A The left-hand side is identical to Table i. It is the existing plan. We would look over to the right-hand side of the table, the bottom row of the table likewise shows that Alternative 3 has a tilt or bias in favor of the Republicans, with Republicans having a majority in 12 of the 19 seats or 63 percentage.

So while this plan also has a bias or tilt towards

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Republicans, it is significantly less than the bias or tilt of Act 1. In Act 1, the bias was percent or four and a half seats. Here the bias is percent or two and one-half seats.

Q And can you turn over to Table 4 and tell us what plan that relates to?

A Table 4 relates to the plan that is labeled Alternative 4.

Q What does it reflect about the seats vote relationship in Alternative 4?

A Again, if you look to the right-hand side of the table, you see that Alternative 4 has precisely the same partisan tilt or bias as Alternative 3. That is Republicans have a majority in 12 of the 19 districts based on our 19 elections. Democrats have a majority in seven.

So once again, the tilt in favor of Republicans is 13 percent or two and one-half seats as compared to 24 percent or four and one-half seats for Act 1.

Q Is Table 5 then a summary that includes the results of your seats votes analysis?

A Yes, it summarizes the seats votes and some other analyses, but the seats votes summary is included in Table 5.

Q Okay. Were there some checks that you performed to verify the reliability of the analyses that you have just presented?

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A Yes. I performed a number of checks on the reliability of the analysis just presented.

Q Okay. Can you give us some? Tell us what those were.

A Yes. Check number one is based on Table 1 itself. And it is just a check of the correspondence in the existing 1992 plan between on average the Democratic and Republican percentages in each district for our elections and whether that district is held by the party that has a majority in the district based on this ten year average.

And in 18 of 21, better than 85 percent of the districts, the party having a majority in the district based on our 19 elections over a ten year period also holds that particular seat based on Congressional elections.

There are only three exceptions, and they are all quite explicable and not surprising.

Q What does that tell you about the analysis?

A It tells me there is a very close correspondence. You don't get much better prediction than close to 90 percent in social science between the average statewide results across a ten year period and whether or not a Republican or Democrat has been elected in a district for Congress.

JUDGE YOHN: Which table are you on now?

A Table 1, Your Honor.

BY MR. SMITH:

Q You were discussing which plan at this point?

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A What I was doing, Your Honor, was looking at the 1992 plan.

JUDGE YOHN: I understand what you are doing. I thought you were still on Table 5.

A I am sorry.

JUDGE YOHN: I didn't understand it with reference to Table 5.

A This is definitely Table 1.

BY MR. SMITH:

Q Are there some other checks that you did on the reliability?

A Yes, there are a number of other checks that I performed. If you turn now to Table , that represents another series of checks that I performed on my analysis and on the reliability of the data.

What Table 9 does is look at linear correlations which is nothing more than the linear or straight line relationship between two sets of data, how closely do they correspond to one another.

I looked at this correlation from 1992 to 2000 looking each year at the mean Democratic vote for statewide elections held in that year. So each entry in the table

represents the average Democratic vote for all the statewide elections held in 2000, 1998, 1996, 1994 and 1992.

I then looked at the correlations among all of

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those averages to see whether or not there was essentially a stable Democratic and Republican electorate from year to year over this time period.

Let me say the linear correlation varies from zero, which indicates no relationship between the two years, and 1.0, which you never get in social science, which indicates a perfect relationship, exactly the same numbers from one year to the next.

However, the table does show extremely high correlations across this entire time period and for all the various pairs of elections. In every instance, the correlation is above .9, very closely approaching the perfect correlation that you only get in experiments and not in the real world.

Q What unit of geography are you studying?

A These are all as indicated by the table precinct level data. So I am correlating these averages across all of the 9400 plus precincts of the state.

So you are looking at over 9,000 data points and seeing how closely they are correlating with one another. We are getting down to much finer geography than Congressional districts.

Q How does this correlation relate to the reliability of your analysis?

A There has been some issue raised about changing

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precinct boundaries over time. And as in every state, as was described by the previous witness, there is a need to trace those boundaries over time and allocate election returns to a common base of precincts for purposes of comparison.

That is a standard procedure in social science. It is done in every state in which I have ever been involved. And listening to the testimony, standard methods were followed. This, however, tests whether any problems arose in that allocation. Because as you heard from the testimony and the cross-examination, the problems would obviously arise in the comparison between elections held at the beginning of the decade and elections held at the end of the decade when you have the maximum number of precinct changes.

If there were significant problems to arise, what this data would show is substantially lower correlations between the precinct level averages from 1992 and 2000 as compared to the precinct level averages from 2000 in 1998 when there are many fewer precinct changes.

In fact though if you look at the table, there is no such pattern of difference. If you look at Table 9 and look at the first data column of the table, you see the correlation by precinct between the mean Democratic votes in 2000 and is .924, extremely high correlation for social science.

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Similarly, the correlation between too much more recent elections, the mean Democrat and the mean Democrat 1998 is .931, almost an identical correlation. You are changing over there in the third decimal place.

And likewise, if you look at the next column, the correlation between the mean percent Democrat in 1998 and the mean percent Democrat by precinct in 1992 is .934 which is actually higher by a trivial amount, but it is actually higher than the mean between 1998 and 2000 of .931.

So there is utterly no indication in this data that precinct allocations in any way have affected the relationships over time. Quite the contrary. No matter what years you are looking at, the correlations are comparable and extremely high.

Q Okay. Are there some additional checks you did on the reliability of your analysis?

A There are. Table i is likewise looking at linear correlations at a very fine level of geography, the precinct level. This table tests the relationship between the statewide vote and the Congressional vote to see if there is a correspondence between the two.

Obviously, you wouldn't expect a perfect correspondence because as I indicated, there are uncontested elections which we took out of the analysis, but there are also some very lightly Congressional elections. And, of

course, each of the individual Congressional elections are affected by unique factors to the individual Congressional Districts.

However, given all of that, one still finds extremely high linear correlations for each year between the percent Democratic in the statewide elections on average for that year and the percent Democratic in the individual Congressional elections conducted that year.

Remember linear correlation varies from zero to one. And in each of these cases, we have linear correlations

above .8, again extremely high correlations particularly when you are dealing with data at the precinct level and many, many thousands of precincts.

Q Turning over to Table 11, is that an additional check?

A Table 11 is yet an additional check. Here I performed an analysis known as regression analysis which looks for each year at the relationship between the mean vote cast for statewide candidates and the vote for Congressional elections in that same year.

And essentially what the regression analysis gives you is that if at the precinct level -- again, this is at precinct level analysis -- the percent Democratic in the statewide elections were to increase by one percent, by what percent would you expect the percent Democratic in the Congressional elections to increase?

And correspondingly because percent Democratic and percent Republican are mirror images of one another, if percent Republican increased by one percent in a precinct for the statewide average, by what percent would you expect the Congressional percentage for Republicans to increase?

And these numbers are reflected in the first data row of the table for 1992, 1994, 1996, 1998 and 2000. And they show about as close a correspondence as you can get in social science.

They show essentially a one to one correspondence between the statewide averages and the Congressional vote. For example, for the 1992 elections, if percent Democratic in a precinct increased by one percent for the statewide elections, you would expect the percent Democratic for an Congressional election to increase by 1.1 percent.

And correspondingly because they are mirror

images, if percent Republican in the statewide elections increased by one percent, you would expect percent Republican in the Congressional elections by precinct to increase by 1.1 percent.

For 1994, the correspondence between the statewide and the Congressional elections at the precinct level is likewise very close to .94. In 1996, it is 1.1. In 1998, it is .98. And in 2000, it is 1.0. And overall, the average is virtually equal to one.

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So what this means is if you had a set of precincts and you reallocated them into a new set of Congressional Districts -- that is the way we heard Congressional Districts are created at the precinct level -- you would expect that on the basis of the precincts you put into a new Congressional district, the statewide, if the average of the statewide elections increased by one percent for the Democrats, you would likewise expect the Congressional vote for the Democrats in that new Congressional district to increase by a precisely corresponding one percent.

Likewise, if you allocated precincts into a new district such that for the statewide elections, the average percent Republican increased by one percent, you would likewise expect in Congressional elections the average percent Republican to increase by one percent.

So the statewide elections are a nearly perfect tool for assessing changes in the expected percentage in Congressional elections.

Q Doctor, let me ask you: Did you do anything to study whether the particular statewide elections you selected made a difference in the analysis?

A Yes, I did. I did two things -- two additional checks. One, I took out the one election -- the 1991 special election that was not conducted at the same time as the

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Congressional elections, recomputed the analysis. And not surprisingly since it was just one election, not all that much different from the average statewide mean, it had no effect whatever on the outcome of the analysis.

Second thing I did was look at the bottom of the ticket only. That is I took out Congress, President, and Governor and only looked at the bottom of the ticket to see if that would affect the results. And once again, you found the same kind of major disparity between votes.

JUDGE YOHN: What do you mean the bottom of the ticket?

A All elections other than President, Governor and --

JUDGE YOHN: Auditor General?

A Auditor, Treasurer and Attorney General.

MR. SMITH I am about to turn to another area in his testimony, Your Honor. This would be a good time to break.

JUDGE NYGAARD: Well then, why don't we break for lunch. We are at twelve-thirty. We will recess for lunch and resume our proceedings at one-thirty.

THE CLERK: Court is in recess.

(A recess was taken.)

(Whereupon, the morning proceedings were concluded.)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, et al.,
Plaintiffs

v. NO: 1:CV-01-2439

THE COMMONWEALTH OF
PENNSYLVANIA,
Defendants

TRANSCRIPT OF PROCEEDINGS

REAPPORTIONMENT NONJURY TRIAL

VOLUME 2
(Pages 109 through 219)

BEFORE: HON. SYLVIA H. RAMBO, Judge

DATE: March 11, 2002

PLACE: Courtroom Number Three
Federal Building
Harrisburg, Pennsylvania

COUNSEL PRESENT:
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BART DELONE, Esquire
For - Defendants Commonwealth of PA, Governor,
Secretary and Commissioner Filling

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AFTERNOON SESSION

ALLAN LICHTMAN resumes the stand.

JUDGE NYGAARD: You may continue, Mr. Smith.

BY MR. SMITH:

Q Professor Lichtman, I believe you were telling us about the seats votes study that you did. Can you tell us what other ways you went about studying the part is an fairness of Act I?

A Yes. The second way in which I went about studying partisan fairness was to look at the treatment of incumbent

members of Congress to see if Republican and Democratic incumbents were essentially being treated the same way in the plan.

This is extremely important because incumbents have significant electoral advantages – fund-raising, name recognition, a personal relationship with constituents. And the literature stresses even if a plan had no packing or cracking and you saw no bias in a seats votes relationship, it still could be significantly favorable to one party or the other through the treatment of incumbents.

Indeed, some of the literature have called the treatment of incumbents the key to a partisan gerrymander.

Q How did you go about studying treatment of incumbents?

A I studied the treatment of incumbents in a number of different ways. First thing I did was look at the extent to

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which incumbents were paired in the same district. That is I looked at essentially two things -- were incumbents of the same party being paired together in a single district thus eliminating the incumbent advantage of at least one of them, and was that being applied equally by the parties.

I also looked at whether or not there were corresponding open seats created to create opportunities for a party that might have been disadvantaged by same party incumbent pairing.

Then also on pairing, I looked at whether or not there were Republicans and Democrats paired in the same district. That is a cross party pairing. And if so, did the district tend to favor the Republican incumbent or the Democratic incumbent, or did each member of one or the other parties have an equal chance in that district again based upon my 19 election average.

Q Where is the pairing analysis reported in your tables?

A For Act I, the pairing analysis is reported in the same Table 1 that we looked at for the seats votes analysis.

Q That is Plaintiff Exhibit 12 --

A Yes.

Q -- the collection of tables?

A Yes. And this is the very first page Table 1.

Q What did you find with respect to the issue of pairing?

A First as I mentioned, I looked for pairings of members

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of the same party in a district. And it turns out that there are four Democrats paired into two districts and no Republicans paired with one another in any districts.

If you look down the column entitled Conference Plans, five columns from the left, you can see District 13 under the new plan pairs Representative Borski and Hoeffel, two Democrats.

Likewise, if you go down the list to District 14 -- and these are not in consecutive numbers on the Act I Plan because they are aligned with the 1992 plan so we can follow the treatment of incumbents. If you go down a little below the middle of the page to District 14, you can see that two Democrats Coyne and Doyle are likewise paired in the same district. Thus four Democrats are paired with one another, but there are no same party pairings of Republicans.

Table 1 also shows for District 17 under the Act I Plan, which is cited about a third of the way -- quarter of the way down the column -- there is a cross party pairing. Representative Holden is paired, a Democrat, is paired with Representative Gekas, a Republican.

If you turn to the entry immediately on the next column, you can see that based on our 19 election average

that corresponds so closely to Congressional results, that district had an average Democratic percentage of 41.7 percent or correspondingly an average Republican percentage of 58.3

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percent. So it is a heavily Republican leaning rather than a Democratic leaning district in which a Republican and Democrat is paired.

So when you look at the sum of the pairings, you can see based on pairings the two parties are not being treated equally. Only Democrats, and four of them, are paired in the same district and another Democrat is paired with a Republican in a district with an average heavy Republican majority across 19 elections.

Q What was another way in which you looked at the treatment of incumbents in Act I?

A Another way I looked at incumbents was to what extent were their districts changed to make their districts either more favorable or less favorable compared to the districts in which they previously won election under the 1992 plan.

Q Okay. What did you find?

A I found again that when one looks at the precise changes in the districts, that the consequential changes favored the Republicans over the Democrats.

Let me cite an example here. If you go down four rows to District 4, we can look at Representative Hart. Under the existing plan, Representative Hart was able to win the election in a district that leans Democratic. That is 52 percent on average Democratic.

Her new district, however, drops the Democratic

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percent in terms of our statewide average which remember has essentially a one to one correspondence with Congressional results. It declines in its Democratic percentage by 3.4 percent or correspondingly improves in its Republican percentage by 3.4 percent. So in her new district, she has instead of a 52 percent Democratic majority, a 48.6 Democratic minority or a 51.4 percent Republican majority. So her prospects are improved in the new district.

If you go down almost down to the bottom, if you look at again on the left the 1992 plan, we see in District 20, there is a Democrat Representative Mascara who won election in a Democratic district. He is a Democratic representative, a district that on average had a percent Democratic 54.4 percent.

In contrast to Representative Hart, who had her district improved by over three percent in its partisan alignment, Representative Mascara experienced nearly an eight percentage point drop in the percent Democratic in his district.

His district declined by 7.6 percent in its Democratic percentage going from a district that was 54.4 percent Democratic on our 19 election average to a district that was 46.8 percent Democratic or correspondingly 53.2 percent Republican.

Q You mentioned an open seat issue. What does Table 1

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reflect on the open seat in Act I?

A One way to offset the party which is being disadvantaged by the treatment of incumbents like we see here is by creating open seats that give that party a significant

opportunity to win; open seats that tend to lean in favor of the party disadvantaged by the pairing.

We do not find that, however, for the Act I Plan. There is an open seat created, but it is a Republican leaning, not a Democratic leaning open seat and thus reinforces, rather than offsets, the effects of the pairing.

The open seat is right at the very bottom on the right-hand side District 6 opened under the Act I Plan, it is the very last district listed there. And on average, across 19 elections, its Democratic percentage is not a majority, but rather a minority 44.5 percent. Correspondingly, this district is over 55 percent Republican based on our 19 election average.

Q Let me ask you to turn over to Table 4 in Exhibit 12 and report on how alternative format rates with respect to the issue of pairing and changes in districts?

A Yes. With respect to pairing, we can see, first of all, looking at Table 4 if we go down about to the middle of the table under Alternative 4 and look at new district 19 under Alternative 4, there is a same party pairing of two Republicans, Representative Shuster and Platts.

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Likewise, if we go down about five or six additional rows and look at District 18 under the Alternative 4 Plan, we see two Democrats are paired Coyne and Doyle. There are no cross party pairings, and there are no open seats.

So the result of the pairing analysis is two Democrats are paired and two Republicans are paired, a different picture from what we saw under the Act I Plan.

Q Changing the districts, how does that work out in this plan?

A Again, that does not appear to be targeted toward one party or the other. The consequential changes in districts go in both directions.

Just to cite some examples, if you look at District 3 under the Alt. 4 Plan, we find a Democrat Representative Borski whose previous district was reduced by 4.5 percent. It fell from 59.5 percent Democratic to 55.0 percent Democrat.

If we look next at Representative Hart in District 4 -- remember, she was the Representative who had won in a Democratic leaning district -- her district is very substantially improved. It dropped 6.9 percent in its Democratic percentage all the way down to 45.1 percent. So there we see a Democrat disadvantaged, a Republican improved.

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If we go all the way down to the very bottom and look at District 9 under Alt. 4 where we find Representative English, he is slightly disadvantage. He is a Republican. His district increases by two percentage points going from 47.7 to 49.7 in its Democratic percentage. It still is slightly Republican leaning, but less so than previously.

So we have a mixed picture in all four as compared to the more uni-directional picture in Act I.

Q Did you also study the extent to which the incumbents in Act I would retain their existing constituents?

A I did.

Q Can you tell us why?

A We had talked about the treatment of incumbents being important because incumbents have significant electoral advantages. One component of that electoral advantage is establishing a personal relationship with your constituents.

So to the extent to which you can retain previous constituents, previous population in your new district, that is an advantage. You are dealing with the same people with whom you have previously established a personal relationship.

To the extent your previous constituents are removed from your district, that is a disadvantage because you lose the benefits of the personal relationship that you established with those constituents.

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So another way of looking at the treatment of incumbents is to see whether or not there are differentials in the treatment of Republicans and Democrats with respect to the retention of previous constituents.

Q Let me ask you to turn over to Table 8 which I think is relative to this issue.

A Yes.

Q What does it show?

A It shows that in addition to the other incumbent effects that we have discussed, the Alt. 1 or as it is called Conference Plan there --

Q Act I you mean?

A Act I, excuse me. I get my Alt.'s and Acts mixed up. Act I, the enacted Plan which is labeled Conference Plan, is the first row of the table shows that in districts where there are Republican incumbents, they retained approximately 76 percent of their previous constituents. Whereas in new districts where there are Democratic incumbents, they retained on average approximately 51 percent of their constituents.

So the two parties were not being treated equally. Republicans retained 25 percentage points more of

their constituents than Democrats or in percentage terms 50 percent more.

Q What did you find on the same issue with respect to

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Alternatives 3 and 4?

A With respect to Alternatives 3 and 4, there was some advantage to the Democrats, but it was much smaller than the 25 percentage point gap in Alt. 1 -- excuse me, Act I. In Alternative Plan 3, Republicans retained approximately 60 percent of their constituents. Democrats retained approximately 66 percent for a gap of six percentage points.

And in Alt. 4, Republicans retained approximately 55 percent, and Democrats retained approximately 63 percent for a gap of eight percentage points.

Q Let me ask you to turn over to Table 12 and tell us what it tells you about retention of existing constituents?

A Table 12 simply breaks out the data that was summarized in the previous table to look at the retention of the constituents in individual districts. And in a few cases, this analysis is important because it does give further insight into the treatment of some of the incumbents.

Q Can you give us an example?

A Yes, a couple of examples. If we are to go down to District 17 under the Conference Plan, it is about six rows down, that is the district that paired Holden, the Democrat, and Gekas, the Republican. It is matched on that row to Holden in his previous District 6. He retains 39.1 percent of his previous constituents in the new district in which he is paired.

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If you go down almost to the bottom of the table, we trace the same number for Representative Gekas. That is we track new District 17 to Representative Gekas' old district, and he retains 60 percent of his previous constituents.

So in addition to that district having a voting record favorable to Republicans, it also gives Mr. Gekas an advantage in terms of the retention of previous constituents.

Another example comes right below that. If one were to go down under the Act 1 Plan to District 18 where there is Mr. Mascara who previously was located in old District 20, we can see that Representative Mascara retains only 44 percent of his previous constituents. When combined with a loss of 7.6 percent Democratic strength in that district, this further imposes an electable burden on Mr. Mascara retaining less than half of his previous constituents.

The final example would come from District 13, if up just a third of the row. That is the district that pairs -- one of the districts that pairs under Act I two Democrats Borski and Hoeffel. We can see Mr. Borski retains 47.3 percent of his constituents in new District 13.

And then if we go down to the middle of the page and we trace Mr. Hoeffel, likewise he retains 47 percent of

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his previous constituents. In other words, the new district is split between retention by Mr. Hoeffel and retention by Mr. Borski. That means whichever one of these two Democrats emerges to be the candidate in that district, that Democratic

candidate, although he was previously an incumbent, will have the benefit of less than half of his previous constituents making it more difficult for that candidate to prevail in that district.

Q Let me ask you to turn back to Table 6 and touch on the issue of compactness. Can you tell us, first of all, why did you look at the compactness of the districts?

A I looked at compactness and a number of other factors such as county and municipal splits for several reasons. First of all, these can be indicators of a plan that is not fair to the two parties.

You can measure partisan fairness by its own right. Certainly nothing about compactness or municipal splits or county splits proves that a plan is not fair on a partisan basis, but they can be indicators.

Secondly, I looked at them because conceivably one might want to justify a plan on the basis that the plan was pursuing value such as compactness and minimizing county, municipal and the precinct splits. I wanted to see if that was true of the Act I Plan as compared to various alternative plans that I analyzed.

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Q Can you explain the two different kinds of compactness scores that you reported here for each district?

A Yes. These are two standard compactness scores that are used by analysts to compare the compactness of different plans. The first is labeled DISP or dispersion. That essentially measures the geographic spread of a district. And it is the ratio of the area of the district to the area of the smallest circle circumscribing that district. So it measures departure from that circular shape.

The lower the ratio, that is the smaller the area

of the district as compared to the area of the smallest circumscribing circle, the less impact on that measure. So the smaller the dispersion score, the less compact on that measure is the district.

The second measure is known as the perimeter measure. It is less a measure of geographic spread or dispersion than it is a measure of irregular borders of a district.

It likewise is a ratio. It is the ratio of the area of the district to the area of a circle that has the same perimeter of the district. So if you stretched out the district and made it into a circle, you would take the ratio of the area of the district to the ratio of the area of the circle. And, again, the smaller the number, because it is a ratio, the less compact on a perimeter measure.

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Q What did you find with respect to the comparisons of compactness reported in this table?

A I found that looking at the 1992 Plan, the Act I Plan, and Alternatives 2, 3 and 4 that based upon both of these measures, the Act I Plan was the least compact.

If you look at the very last row of Table 6, that gives mean scores averaged across all of the districts. Remember the lower, the less compact. And the Conference or Act I Plan on average has lower scores for both measures than any plan.

I also looked at the minimum -- that is the least compact district in each plan based upon the dispersion and the perimeter measure. I found likewise the Conference or Act I Plan had a district that based on either measure was less compact than the least compact district of any of the other plans to which I compared it.

Q Finally, let me ask you to look at Table 7 and report what you did there.

A Pardon me?

Q Table 7?

A Table 7 is a summary table which includes the dispersion and perimeter scores that we already examined, as well as scores for the 1992 Plan, the Act I Plan, and the Alternative Plans for county splits, municipal splits, precinct splits and total population deviation.

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Q Is there an area you wanted to correct on this table?

A Yes. These scores were supplied to me. And my understanding is I have all three too high on population deviation. As Mr. Priest indicated this morning, I have it at 19, but the correct number should be 17.

JUDGE NYGAARD: Where are you looking?

A I'm sorry. I am on Table 7. All three -- the column that reads all three plans, it is about four in from the right.

THE COURT: Okay.

A The very last number should be 17, not 19.

BY MR. SMITH:

Q What does this table tell us about the Act I Plan and how it compares?

A If we look first at the number of county splits, we can simply read this table across the row, and we see that the Act I Plan has the most county splits tied with the Alternative 4 Plan. Both those plans have more county splits than the other plans to which they are compared, but they are the same at 25.

With respect to municipal splits, if we read across the next row of the table, we see the Act I Plan has

65 municipal splits. The plan with the next highest number of municipal splits is the Aft. 4 plan with 42. So the Act I Plan has 23 more municipal splits than the next plan with the

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highest number of municipal splits.

If we look at precinct splits -- that is our next row -- we see that the Act I Plan has six precinct splits. That is three more than the 1992 Plan, and all of the Alternative Plans 2, 3 and 4 have zero splits.

Finally if we look at population deviation, the Act I Plan has 19 person deviation, which is less than the 1992 Plan, but with the correction more than Alternative 2, 3 or 4. Alternative 4 I believe has the mathematical minimum possible in Pennsylvania.

Q Can you just summarize for the Court your overall conclusions about the partisan fairness of Act I?

A Yes. It is clear from multiple analyses that Act I does not treat the two parties equally, but rather on every measure is quite significantly tilted in favor of the Republicans.

On a seats votes analysis where the parties are essentially evenly divided across all districts, under the Act I Plan, the Republicans have a majority based on the averages in 74 percent of the districts, a 24 percent bias or four and one-half seats larger than any of the other plans.

With respect to the treatment of incumbents, the Act I Plan pairs four Democrats and no Republicans. It pairs a Republican and Democrat in a district based both on retention of constituents and average votes that favored the

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Republican. And rather than providing an open seat that creates opportunities for the party disadvantaged by the pairing, it creates an open seat that leans to the Republicans. You do not have comparable disadvantages to one or the other party in the Alternative 4 Plan.

In addition, there are specific targeting of incumbents who are not paired to consequentially improve Republicans and consequentially diminish Democrats in terms of their electoral opportunities.

Likewise with respect to the retention of previous constituents, the Plan by a 25 percentage point margin favors Republican as opposed to Democratic incumbents. This partisan tilt to the Plan cannot be explained by the fact that the Plan is better than alternatives on compactness, county splits, municipal splits, precinct splits. Rather, the Alternative Plans are better on all of those measures.

In addition as compared to the alternative plans, the Act I Plan has a greater population deviation.

MR. SMITH: No further questions, Your Honor.

JUDGE NYGAARD: Mr. Krill, you may examine.

MR. KRILL: May I have just a minute, Your Honor?

JUDGE NYGAARD: Yes.

MR. SMITH: While he is thinking, I believe I should have moved into evidence Exhibit 12 which are the tables.

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MR. KRILL: Your Honor, I would like to cross on Exhibit 12.

THE COURT: Very well.

CROSS EXAMINATION

BY MR. KRILL:
Q Dr. Lichtman, calling your attention to Plaintiff Exhibit 12, the bottom row of your table where it says sum –
JUDGE NYGAARD: Which table?
BY MR. KRILL:
Q Table 1, first page of Exhibit 12. Forgive me, Your Honor. The bottom row it says sum. 71nd in the third column from the left, there is a percentage 50.3 percent?
A Correct.
Q Is that a percentage of votes or an average of percentages?
A It is an average of the percentage in each of the 21 districts.
Q Let's go up that column there, the 21 districts, let's start with District I. The figure 79.7 percent appears as the percent Democratic voting strength for District I; correct?
A Correct.
Q How is that percentage figure arrived at?
A That is the 19 elections averaged for the precincts in District 1 from 1991 to 2000.

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Q If we go to Exhibit 13 –
A Is that in my book?
MR, SMITH: I believe it is.
BY MR. KRILL:
Q Go to page Ii of Exhibit 13.
A Yes. Table Ii?
Q Page 11.
A I am not sure what these pages are. They are handwritten in?
Q Handwritten in.

A Got it.
Q On the side?
A Yes.
Q Page 11 in Exhibit 13 has sets of -- two sets of figures. It has actual -- purported actual votes, and then it has percentages in the second set at the bottom half of the page. Do you see that?
A Yes.
Q For purposes of producing the 79.7 percent that you show on Table 1 of Exhibit 12 for District I, what did you average? Did you average the actual vote numbers on page eleven of Exhibit 13, or did you average the percentages on page eleven of Exhibit 13?
A As I explained to you in our last colloquy, I didn't use those percentages on the bottom at all. I did my own

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calculations using just the votes for Democrats and Republicans.
So for the President 2000, I would have taken 182,154 divided by the sum of 31,717 plus 182,154. I would have performed a similar computation for each of the 19 elections and then averaged them.
Q You would drop the other?
A Yes. So we are just looking at Republicans versus Democrats. As I explained in my direct, the two would be mirror images of one another.
Q So what you did was actually take the numbers, turn them into percentages and then average the percentages?
A Correct.
Q Isn't that what the bottom half of the page does?
A No. The bottom half of the page does not compute percentages the same way I did because the bottom half of the

page uses the other as well. It is not a big difference, but there is a small difference.

Nor did I verify any of those numbers since I didn't use them.

Q All right. So what you did was take the top half of the page and convert the voting figures given on page eleven of exhibit 13 into percentages?

A Correct.

Q Now that means, doesn't it, Dr. Lichtman, that when we

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turn back to Plaintiff Exhibit 12 and look at District I?

A Yes.

Q Looking at the third column percent Democratic 1991 to 2000, each one of those percentages reflects a different level of turnout?

A No. All the percentages reflect the same level of turnout because all of the percentages in that column are based on the same 19 elections.

Q Right. However, district by district when we look at Plaintiff Exhibit 13, page Ii, we can see that there is a different voter turnout in each district; can't we?

A That is correct.

Q In fact, there are some districts that have consistently a lower turnout than others; didn't they?

A We would have to look at that. If you want to present to me what those districts are and perform computations, I would be happy to look at it. But just eyeballing the table, you can't tell that.

Q So you didn't bother to determine whether there were differences in turnout on a district by district basis when you performed your computations; did you?

A There are differences by district in turnout. But my

computation is the average across all districts which is a standard way of performing this analysis because districts are not apportioned by voters. They are apportioned by

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population.

Q Right. You, however, are making a comparison or attempting a comparison based on voters, not on population. And let's just look, for example, on page eleven of Exhibit 13 at Congressional District 1.

A I am sorry. What page are we on?

Q Page eleven, Exhibit 13.

A Yes.

Q Let's just use what you use. Let's use the Republican and Democratic turnout. You see that Bush got 31,717; correct?

A Correct.

Q And Gore got 182,154; right?

A Correct.

Q Assuming those numbers are correct. If you add those two together, we get what roughly?

A 214,000. I am adding it in my head, but I think that is about right.

Q I think you are right. Let's take District 13 on page 11 of Exhibit 13.

A Correct.

Q You see that Bush got 117,000 approximately, and Gore got 156,00. If you add those together, what do you get roughly?

A 273 -- 274,000 approximately.

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Q Substantially a higher turnout in District 13 than in District 1 in Philadelphia?
A Indeed. These are two districts with Democratic incumbents in them that voted for Gore that had different turnouts, that's right. What you are going to find is a mix of Republican and Democrat districts with different turnouts that pretty much even out when you add it altogether.
Q Now let's go back to Exhibit 12. Table 1 of Exhibit 12 takes the low turnout in District 1 and displays that as a 79.7 percent Democratic strength; correct?
A Correct.
Q Table 1 of Exhibit 12 then takes District 13, which is a high turnout district in comparison?
A In that one election.
Q In that one election. And compares that to the 46.9 percent -- gives that as a 46.9 percent Democratic --
A Yes.
Q Now is it true that in order to reach your sum of 50.3 percent, at the bottom of the third column of Table I, that what you did was add the 21 percentages above it and divide it by 217
A Yes. The average Democratic strength in each district as compared to the number of districts won by Democrats and Republicans.
Q So you gave equal weight then to low turnout districts

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and high turnout districts for purposes of calculating your voting strength?
A Absolutely. That is the correct way to do it because you are interested here in partisan bias and separating out

partisan bias in turnout differences. But the truth is as you illustrated for me, some Democratic districts have high turnouts, some have low.
If I were to simply -- and you would never do it this way, but if I was simply to add up all the votes and average, it would come out not significantly different from a district by district average.
Q But you didn't do that; did you?
A I did it just as a check. That is not the proper way to do it as I just explained why.
Q You did not adjust for weight by turnout when you computed these averages that are showing up?
A No. You should not adjust for weight for turnout because you are separating out partisan bias from turnout differences. Remember districts are apportioned by population, not by turnout.
It is not particularly the case in Pennsylvania, but in many states, when you create minority districts, minorities tend to have lower turnout than other groups. That doesn't mean they get fewer districts as compared to their population because their turnout is lower.

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Q Dr. Lichtman, your Table 1 of Exhibit 12 isn't comparing populations. It is comparing voter turnout; isn't it?
A It is not comparing voter turnout. It is comparing the voter strength in individual districts compared to the average voter strength across all districts.
Q It is based on voter turnout, not on population; correct?
A It is based on the percentage strengths of each candidate in each district. Yes, there will be differences

in turnout across districts even though the populations are the same because some groups of voters turn out more than others. But in Pennsylvania, that would not be a consequential difference for the bottom line number.
Q Did you compare any of these districts to see whether any of them had consistently high turnout in Republican areas?
A Pardon me?
Q Did you look to see whether the Republican districts tended to have a higher turnout than what you call the Democratic districts?
A As I said when you average it out, there is not a significant Republican versus Democratic difference as you demonstrated with District 13.
Q You didn't do the averaging out; did you?

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A Yes, I did it as a check. I already told you that. I did not -- if you simply add the total numbers as opposed to averaging the votes, there is not a significant difference from the 50/50 mark.
Q You described your various checks to counsel in direct examination. You didn't mention doing any sort of averaging of votes across the 19 races on a district by district basis as one of your checks?
A It's not a check because in fact the proper way to do the analysis is to take the district by district average. So you are simply looking at partisan bias and not looking at bias that may be caused strictly by the fact that some groups of voters happen to turn out at lower rates than others.
Q Now you are trying to demonstrate partisan unfairness or fairness on a statewide basis; aren't you?
A Across all the districts, that's right.

Q So by weighting low turnout districts the same as consistently high turnout districts -- in fact by not even bothering to find out which are which, you have built into your analysis the potential for its your own partisan bias; haven't you?
A Quite the opposite. I have isolated partisan bias from bias that might naturally occur one way or the other to either party as a result of turnout differences. There's controls for turnout differences.

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If you did not so control, you may conclude that a plan was intended to be biased in a partisan way, when in fact the plan may have allocated persons as fairly as possible but there are natural turnout differences in some states between some population groups and others.
And the literature makes clear the need to separate out partisan bias from turnout effects which is precisely what I did here.
Q We have been talking about Table I of Exhibit 12. You used the same methodology for Tables 1 through 4 of Exhibit 12; is that correct?
A Correct.
Q Now Table 1 has two columns labeled REP OR DEM DIST, one for the 1992 Plan promulgated by the Pennsylvania Supreme Court and one for the Act 1 Plan; correct?
A Correct.
Q Let's look at the 1992 Plan where you have a column labeled REP OR DEM DIST. What you did was put in either a DEM or a REP based on whether or not the average that you calculated was on one side or the other of 50 percent; correct?
A Correct.

Q So that if a district by your analysis had a Democratic percent above 50 percent, you labeled it DEM. If it was below 90 percent, you labeled it REP or Republican; right?

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A Correct.
Q This methodology that you use was not something that you developed to actually predict outcomes; was it?
A It is closely correlated, as we already indicate d , with the outcomes of elections. But by itself, it is obviously not going to tell you who wins or loses a district. It is simply designed to indicate the effects of a redistricting.
You can stack a plan one or another in a redistricting, but you can ultimately guarantee the outcomes in every election.
Q Now let's see how your methodology correlates with historical reality, Dr. Lichtman. You used 19 statewide races. In those 19 races, how many of the winners were Republicans and how many were Democrats?
A I don't have that data right in front of me.
Q You have it in front of you in Exhibit 13 don't you? On page eleven, you could easily discern that?
A Looks like I would have to add up numbers I will if you want me to. It will take a couple of hours
Q Let me ask you to look at Exhibit 89. Is that still on the witness stand? You heard Mr. Priest testify about that exhibit this morning; didn't you?
A I did.
Q Exhibit 89 is basically the same as his page eleven. I am following Plaintiff Exhibit 13 except it has three rows

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added to it.
Now you can easily see who the winner and loser was in each of the 19 races by looking at those totals; can't you?
A Yes.
Q Now do you know who the Republican and the Democrat was in the Bush/Gore race?
A I do.
Q Bush was a Republican, and he lost; correct?
A Statewide?
Q Yes.
A Yes.
MR. KRILL: Now, Your Honor, I could go through this race by race, but the Court can do it as easily as I can.
JUDGE NYGAARD: Thank you.
MR. KRILL: I will ask the Court to take notice that there were twelve Republicans victories in the statewide races and seven Democratic races, twelve and seven.
BY MR. KRILL:
Q Now if you convert that into percentages, Dr. Lichtman, doesn't that roughly mean that the Republicans won 63 percent of the 19 statewide races and the Democrats won 37 percent?
A Assuming that is correct. I haven't verified that the percentages are right.

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Q So you did not do a reality check on your methodology?
A I did do a reality check on my methodology, a whole set of them. In particular what I looked at was -- remember these are averages -- the average Democratic percentage in

each of the individual districts with since we are interested in Congressional results, the actual outcomes of the Congressional results.

I found that 86 percent of the time the districts labeled DEM or REP correspondingly had a DEM or REP member of Congress in that district, that is an 86 percent correct correspondence, about as high as you generally get in social science. The three exceptions are all not especially surprising, Representative Hart in District 4 --

Q Dr. Lichtman, let me ask you to do a different kind of reality check. Did you go back and look at how many Republicans and Democrats actually occupy Congressional seats in the 21 districts that are illustrated on the left-hand side of District 12?

A Yes, that is right there. It is under incumbent, it shows which district is occupied by a Democrat, which district is occupied by a Republican. And then the very next column shows whether or not on average from my 19 statewide elections, the district had a majority Republican or a majority Democrat.

And except in the cases of Representative Hart in

District 4, Representative Holden in District 6, and Representative Hoeffel in District 13, the correspondence was exact. And as I said, these are not surprising exceptions.

You have two moderate to conservative Democrats winning in Republican leaning districts, and Melissa Hart, a very effective woman candidate, who had previously won in a Democratic Senate district winning in a narrowly leaning Democratic district.

Q You were just looking at the present here because you are talking about incumbents; right?

A Pardon me?

Q I say your analysis that you just went through for the past minute looks at incumbents, namely the present configuration of the Pennsylvania Congressional Delegation?

A Right. The most recent results we have because we are interested in the most recent reality since we are looking from the 2000 most recent elections across to the redistricting.

Q Yet you use 19 races that go back eleven years?

A That is correct.

Q Do you know how many Congressional races there have been since 1991 in Pennsylvania?

A I would presume about a hundred.

Q 105. I think the Court can take notice of that. Do you know how many times a Republican won in one of those

races and how many times a Democrat won?

A I haven't compiled all 105 races to check that, I would imagine Republicans have won more often than Democrats.

Q And you would be wrong in your imagination.

A Okay.

MR. KRILL: Your Honor, Defense Exhibits 60 through 65 which are the certification of election outcomes by the Secretary of the Commonwealth, of which the Court can take notice, show that there were out of the 105 races, 51 were Republican -- won by Republicans, 54 were won by Democrats.

A So they are basically evenly divided.

BY MR. KRILL:

Q Evenly. If you do the percentages, Dr. Lichtman, wouldn't you find that 51 out of 150 is less than fifty percent?

A Yes. 51 out of 105 -- I will do the exact calculation for you. I have got a calculator. 51 divided by 105 is 49 percent.
Q All right. And therefore if the Democrats won 54 out of 105 Congressional races over the time period you studied, that would be 51 -- they would have won 51 percent of the time; correct?
A Presuming all your numbers are correct. As I told you, I didn't do this analysis so I am relying on your numbers.

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Q You are aware, aren't you, that right now Pennsylvania's Congressional Delegation has eleven Republicans and ten Democrats?
A I thought there were 21 seats.
Q Yes.
A Is there one open at the moment?
Q Eleven Republicans and ten Democrats.
A Yes, that's correct.
Q But are you aware that that has only been the case for the past year since the November, 2000 general election?
A Right. Assuming your numbers are correct, it has been pretty evenly divided over the ten years between Republicans and Democrats, 51 to 49.
Q In fact, Dr. Lichtman, as the Court can take judicial notice, the official results show that until the 2000 general election, Pennsylvania had a delegation that was ten Republicans and eleven Democrats.
Let's compare that reality with your output here on Table 1 of Plaintiff Exhibit 12. You are saying given the leaning of those districts in the past decade under the Pennsylvania Supreme Court's Plan, you treat those districts as twelve leaning Republican and nine leaning Democrat;

correct?
A Correct.
Q So if the historical record shows that in fact for most

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of that decade, Pennsylvania's delegation was only ten Republicans and eleven Democrats, then you are off by two seats here in your bottom line sum in Table 1; aren't you?
A Which means being off by less than ten percent. That means over 90 percent accurate even assuming everything that you say, that is exactly correct.
But remember, my analysis goes through the 2000 election and is thus meant to apply to the current 2000 election. It doesn't make much sense to take an average that includes the 2000, 1998 elections and somehow apply it backwards to results limited to 1992.
Even if what you say is correct, the analysis still predicts within a less than ten percent margin of error.
Q In politics, a ten percent margin of error is typically the difference between winning and losing; isn't it?
A Not here because we have a four and one-half seat bias or a 24 percent bias. So even assuming -- which I don't assume -- you have this maximum error of about eight or nine percent, you would still wind up with a plan that was very heavily biased in favor of Republicans.
Q Now let's assume that your error of two seats in assigning partisan tilt to districts under the 1992 Plan is the same error that would apply to your assignment to partisan tilt for the Act 1 plan.

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A I can't accept that because as I told you I don't buy your presumption that the error is two seats because you have gone back to a period before the full set of averages that are used. No methodologist would take average from 1992 to 2000 and then apply it backwards to elections that occurred before elections that are in the average.

I would say it most accurately applies to the eleven/ten designation which at most would be an error of a single seat.

Q So if we apply that error that you -- that you say at most exists in your methodology of a single seat and apply that to Act I, now we have trimmed your partisan tilt assignment from 14 Republican, five Democrat to 13 Republican and six Democrat; right?

A No. We haven't trimmed anything because we don't know whether or not a Democrat will be or not able to overcome an unfair situation in the new redistricting, particularly in light of all of the other analyses that I applied to this.

But even if we can concede that point, it would still be a partisan bias in favor of Republicans at least three and a half seats or at least 18 to 20 percentage points which is extraordinarily high as redistricting plans go even taking into account if one wanted to that potential error.

Q So you are saying essentially that your use of 19 historical races is meaningless; that you just want to look

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at incumbency to determine the tilt of the districts?

A Absolutely not. I was quite careful in my testimony to say that one has to look at both. One both has to look at the tilt of the districts which created this 24 percent bias

or four and a half seat bias. One also has to look at incumbent's treatment.

What we have here is a double partisan gerrymandering that both is stacked in one direction in terms of the distribution of Republicans and Democrats into districts and then compounds that by the differential treatment of incumbents.

Q So you aren't concerned at all that your assignment of partisan tilt under the 1992 Plan twelve Republicans, nine Democrats has a big disconnect with the historical reality of who wins Congressional races in Pennsylvania; are you?

A Quite the opposite. It has a very strong connect with the reality of who wins Presidential elections. As I said, this is meant to apply to the current situation because I have elections through the 2000 cycle. And even assuming the validity of the analysis you are presenting, we have a discrepancy of but a single seat.

Q You have hear of the majoritarian principle; haven't you?

A I have.

Q What is it?

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A That is if you have a division of the vote that on average if fifty percent, then you would expect each -- in terms of each of the individual districts that half of them would have a majority for one party and half of them would have a majority for the other party. So neither party can win a significant advantage when they only on average divide the vote.

Q Aren't you really confusing your notion of partisan fairness with the majoritarian principle, namely who gets the most votes gets the most seats?

A Indeed. The two are not confused at all. What I am saying is you can measure partisan bias -- and this is done on a standard basis in the literature -- by looking at the 50/50 mark across all districts and seeing whether or not one party controls at that point significantly more districts than another party.

You can measure that quantitatively by looking at the number of districts the advantaged party has, and that is four and a half, or the percentage advantage, and that is 74 to 26 percent.

Q That 74 to 26 percent is really your simple math of when you count up the number of Democratic seats under Act I and divide by 19?

A The math by its very nature when you do this is simple.

Q That is what you did; right?

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A Of course.

Q Let's take a look at Exhibit 89 and see what that tells us about your analysis?

A Where are we now?

Q 89. Now I would like you to take a look at Exhibit 89. It is on the second page, the Specter/Lloyd race in 1998.

A Which page is it on, the third?

Q It may be.

A No, it is not on the second. I found it, anyway. Whatever page it is on, the 1998 Senate.

MR. KRILL: Excuse me, Your Honors, it is the third page.

A I am there.

BY MR. KRILL:

Q You can just go through here and count up how many

Congressional – hypothetical Congressional seats Senator Specter won versus how many his challenger Mr. Lloyd won; correct?

A Yes, you could.

Q Would you do that, please? Tell me how many Senator Specter won.

A It will take a minute. It is quick, but I count 17.

Q That might mean Mr. Lloyd won two of the hypothetical Congressional races; right?

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A Correct.

Q Now you note here in the totals, don't you, that Senator Specter beat Mr. Lloyd by about 1.8 to 1?

A Yes. I just did a quick calculation. He won well over 60 percent of the vote. That is precisely what you would expect. If you are winning over 60 percent of the vote, the individual Congressional Districts are going to tilt in your favor.

That is called kind of a balloon effect that is described in the literature. When you get a high percentage of the vote, you are going to win an even higher percentage of the Congressional districts because essentially unless you have got Democratic districts well above 64 percent, virtually all the districts will flip in your direction.

That is exactly what we see here. Two very heavily Democratic districts are the ones that Mr. Lloyd wins.

Q Let's dwell on that point that you mentioned. So you are saying that the number of seats that you take is not directly proportional in real life to the percentage of votes that you get; right?

A Yes. That is why you look at the 50/50 point where you

don't have to be concerned with this balloon effect because at the 50/50 point where the parties are essentially evenly divided you can measure whether or not they get an even

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number of seats.

What you would have to do if you got a 64 percent election is look at a lot of other 64 percent elections going the other way and seeing if the two parties weren't essentially the same number of seats. Fortunately here, we are able to compare at the 50/50 point here.

Q That is your contention, Dr. Lichtman. Looking here, there is no such -- in the Specter/Lloyd race, there is no such 50/50 breakout?

A That's right.

Q So in fact, Senator Specter wins a much higher percentage of the hypothetical Congressional seats than even his vote?

A That is exactly what you would expect.

Q So the seat harvest can be disproportionately greater than the percentage of votes?

A Right. But in a fair plan, it would be symmetrical so the seat harvest does not differ for the two parties. Here when we have the two parties evenly divided, we have the Republicans winning 74 percent of the seats on our 19 state average.

Q You just used that term win 74 percent of the seats, but you said earlier that you weren't attempting in Table I to predict outcomes? You weren't predicting wins; were you?

A If you would listen to the last part of what I said, I

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said based on our 19 statewide election averages.

Q So let's see if there is some partisan symmetry here. Why don't you look at Exhibit 89 at the last page the next to the last race, the Treasurer's 1992 race of Mr. Henry vs. Catherine Baker Knoll?

A Which race are we at?

Q Next to the last race in Exhibit 89, Henry versus Knoll?

A Right.

Q Do you see that one?

A Yes.

Q How many hypothetical Congressional seats did Mr. Henry win?

A Mr. Henry?

Q Henry.

A It looks like he won one.

Q That is what I got, too. He won one, and Mrs. Knoll won 18. Do you have who was the Republican and who was the Democrat?

A Probably Henry was the Republican. I am not certain.

MR. KRILL: The Court can take notice in Exhibit 60 through 65, it will be shown that indeed Henry was the Republican, Knoll was the Democrat.

BY MR. KRILL:

Q This time in this race your reaggregation of historical

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races by the new Act I Congressional Districts shows that a good Democratic candidate can sweep the Congressional Districts just as effective -- almost even more effectively than a good Republican candidate; correct?

A Because you are at 64 percent, remember, and unless you are packing Republicans like you have packed Democrats into a small number of districts, unless you have got districts over the 64 percent mark, those districts are going to flip to the Democrats when the Democratic percentage is 64 percent. That doesn't help you understand what goes on in terms of the packing and fracturing of Congressional Districts.

However because you don't get margins like 64 percent in favor of one or the other party in Congressional Districts, you have picked out a couple of extreme elections which, of course, are going to flip the great majority of districts one way or the other.

Q Yes, but that analysis -- contrasting those two extremes, the one lopsided Republican victory and the other lopsided Democratic victory, as these races are reaggregated under Act I, it shows that under Act I, there are a few districts -- just a few that are hard core Republican or Democrat; right?

A NO. Because there are quite a number of districts that can be expected to go Republican or Democrat. There are only a few districts that are extremely packed Democrat or

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Republican with more packed districts disfavoring the Democrats.

Q Let's see. There are two districts that absolutely never go Republican under Act I; right? That is the first and second?

A Yes. And also the 14th might only under the most extreme circumstances.

Q The 14th being in the City of Pittsburgh?

A I believe that's right. 66 percent average Democratic vote.

Q And let's look at the Specter/Lloyd race in 1998 on Exhibit 89. District 14 in that race did go for the Republican Senator Specter; right?

A Yes.

Q In this hypothetical race?

A Yes, with a statewide candidate winning 64 percent of the vote. You had to get that extreme to have that district.

Q And let's look at the worst -- the paradigm of Republican defeat, the Henry/Knoll race in 1992. Only one District won by the Republican here, and that is the 16th Congressional District; right?

A Right, which is the most heavily packed Republican district. Finish there were no Republican districts packed comparable to Districts 1 and 2, and there was only one Republican district packed comparable to District 14.

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Q So District 16 by the way is centered on Lancaster County. Can you see it on the easel?

A Yes.

Q You are not familiar with the political geography of Pennsylvania; are you?

A No.

Q Would it surprise you, Dr. Lichtman, to learn that if you look at each of the 19 races as plaintiffs tried to reaggregate them in Exhibit 13 to show the outcomes under Act I that in each of those 19 hypothetical races for 19 Congressional Districts, that is 19 times 19 races, that in each one of those, the candidate who took the majority of votes statewide took the majority of Congressional Districts?

A We would have to look at the ones right around the 50 percent mark.

Q Would it surprise you to learn that in each one of these reaggregated races, the candidate under Act I who wins the majority of votes statewide wins a majority of the hypothetical 19 Congressional seats?
A That is possible if for the Democrats the majority is wide enough. Republicans can win overwhelmingly majority of these districts with a very slight majority. I do not know of any example where the Democrats under Act I have a slight majority and win a majority of the seats.

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If you want to point me to one, fine, but I do not know of one.
Q Let's take a look. Again, this is just math. And in fact, this isn't even math. We just have to eyeball the races in Exhibit 13 on page eleven and following or use Exhibits 89, and we can see what the outcomes were.
So let's start with Bush versus Gore in 2000. Gore wins the majority?
A I am sorry. I don't have the –
Q Let's use Exhibit 89.
A Bush v. Gore in 2000.
Q Bush v. Gore, we know -
A Let me check that. Okay.
Q How many districts did Gore win?
A Let's see.
Q Under Act 19 (sic)?
A Ten.
Q Gore won 10 of 19 seats?
A Yes.
Q So he won the popular statewide, and he also won a majority of hypothetical Congressional races under Act I?
A Yes.

Q The same is true for Clinton/Dole race in the '96; isn't it?
A I am sure that would be the case. It is a wide margin

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there. I also get ten despite the wide margin of Clinton's victory.
Q Well, try calculating Dole's. I got eleven. I am prepared to be corrected.
JUDGE RAMBO: I got eleven, too.
A We can continue on to the next one.
BY MR. KRILL:
Q The exhibit speaks for itself. Eight versus eleven is what I will represent to the Court that it shows. Again, Clinton widened the margin of victory; right?
A Yes, which is a closer election.
Q Governor in '94?
A Yes. And you count the number of seats won by Ridge, I get 14 or 15.
Q I get 14.
A That is closer than the Clinton/Dole election. That illustrates the point I was making. For a smaller percentage of the vote, the Republicans get a much more substantial share of the seats.
Q So it is 14/5. But it is still the majoritarian principle is followed; he who gets the most votes gets the most seats; right?
A Yes. But looking at the bias, you have got to look at the percentage of votes to the percentage of seats and see if it is symmetrical between the two parties. Here you have the

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Republicans winning a smaller percentage of the vote and several more seats.

MR. KRILL: Rather than go through each of these races with the witness, I will just give the Court my own numbers for these with your permission, Your Honor. And, of course, I am subject to being corrected by the Court or by counsel or in briefs or whatever.

I get the following for President in 1992, Clinton gets a majority of the vote. He gets eleven seats under Act 19.

For U.S. Senator in 2000, Santorum gets the majority of votes. He picks up fifteen seats. Klink gets four under Act 19.

For Attorney General in 2000, Fisher, the Republican, wins the majority of vote and picks up 16 seats under Act 19. His opponent Eisenhower gets three.

For Auditor General in 2000, Casey, the Democrat, wins the majority. He picks up 15 seats Congressional seats hypothetically under Act 19. And his opponent Drew, the Republican, picks up only four.

For Treasurer in 2000, it is the reverse. Haler, the Republican, wins the popular vote and picks up 14 Congressional seats. Knoll, her Democratic opponent, picks up five hypothetical seats.

For Governor in 1998, Ridge wins a majority of the

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popular vote. He picks up 16 seats. His opponent Itkin, the Democrat, picks up three.

For U.S. Senate in '98, we would have done that with the witness. For Attorney General in 1996, the

Republican Fisher wins popular vote and picks up 13 seats. The Democrat Kohn picks up six.

For Auditor General in 1996, the Democrat Casey wins the popular vote and picks up 14 seats under Act I. And the Republican picks up only five.

For Treasurer in 1996, again, it is the reverse. Hafer, the Republican, wins the popular vote and picks up 14 seats. Knoll, the Democrat, five.

For U.S. Senate in 1994, Santorum, the Republican, wins the popular vote under Act 19 -- or Act I. He would pick up 14 of the 19 Congressional seats. Wofford, the Democrat, picks up only five.

And for U.S. Senate in 1992, Specter, the Republican, wins the popular vote and would have picked up 13 Congressional seats under Act I. Yeakel, the Democrat, six seats.

For Attorney General in 1992, Preate, the Republican, wins the popular vote and would have picked up 13 Congressional seats under Act I; Coyne, the Democrat, six.

For Auditor General in 1992, Hafer wins the popular vote and would have picked up 14 Congressional seats

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under Act I. Lewis, the Democrat, five seats.

The witness has discussed with me the 1992 Treasurer's race. And the last race is the U.S. Senate 1991 special election Wofford, the Democrat, wins the election and would pick up eleven seats, and Thornburgh, the Republican, would pick up eight.

A Is there a question for me to respond to now?

BY MR. KRILL:

Q No, I was just informing the Court.

A You asked me about these, and I think I have a right to

comment on your --
JUDGE NYGAARD: Let's wait for a question.
BY MR. KRILL:
Q Now you, yourself, don't have the precinct by precinct results for the 19 statewide races that were used by Mr. Priest to put together the table on page eleven of Exhibit 13; correct?
A He provided me the precinct by precinct results.
Q He provided you with the full data set?
A I don't know if it is the full data set, but he provided me precinct by precinct results for Congressional elections and the 19 statewide elections.
JUDGE YOHN: Who did, Mr. Priest?
A Yes.

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BY MR. KRILL:
Q Those are not here in court today; are they?
A No. I didn't bring the huge stacks of printouts, no.
Q All right. Let's turn to Table 6 of Exhibit 12, Plaintiffs Exhibit 12.
A (Witness complies.)
Q Did you get these compactness figures from Mr. Priest?
A Yes.
Q You didn't run any of these numbers yourself; did you?
A No. As I said, the subsidiary analyses, these were provided to me.
Q So as we sit here today given the evidence that we have in front of us, you couldn't replicate these analyses; could you?
A I could given access to the software that they used, yes.
Q Given the evidence that we have here? You can't

replicate these analyses using Exhibit 13; can you?
A No. You would need the geographic software to replicate it.
Q You would also need a detailed description or assignment file to assign each of the area -- of the component areas to a geographic --
A You would need a map outline of each of the districts, correct.

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JUDGE NYGAARD: How is our cross-examination coming here? We are approaching three o'clock when we would be taking a ten minute recess. Are you going to move into a new area?
MR. KRILL: I am going to spend some time on compactness, but this would be a perfectly fine time for a break.
THE COURT: Why don't we take a ten minute recess and be back in our seats at ten minutes after three?
THE CLERK: Court is in recess.
(A recess was taken.)

AFTER RECESS.

ALLAN LICHTMAN resumes the stand.
JUDGE NYGARRD: Before you resume your cross-examination, I want counsel to think very carefully about how this case is being presented to the Court and how you are cross-examining.
There are things that I am finding out in the exhibits you have given us that we will learn by ourselves that we don't need testimony on. I am concerned that we are not moving this thing along as fast as it has to go to get what has to be done in the period of time we have allocated

not only for testimony, but also to make a decision.
If we don't get this done now, I don't know when

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we are going to get more testimony. I would ask counsel to think very carefully about how you are approaching this, and speed it along as best you can.
If there are witnesses that have some duplication, try to avoid that, please. It is going to not only help the Court, but it is going to help the effort as well. So if you want to bring something to our attention, do so. It will be on the record. Be assured we will take a look at it. We wouldn't have to do it through examination or cross-examination.
With that, let's resume.
MR. KRILL: Thank you.
BY MR. KRILL:
Q Dr. Lichtman, we were looking at Plaintiff Exhibit 12, Table 6.
A Yes.
Q I would just like to illustrate -- I would like you to illustrate for us visually let's say the dispersion method of compactness analysis. Let's take a look at Congressional District 12 under Act 1.
Do you see that on Plaintiff Exhibit 2?
A Yes.
Q It doesn't look very compact to the naked eye; does it?
A Let's separate dispersion from perimeter because what usually happens --

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Q Would you answer my question, please? It doesn,t look

very compact?
A I can't answer your question because there are two dimensions of compactness. You were asking me about dispersion. I think the appearance that you are referring to more reflects on the perimeter than the dispersion; although, to some extent it reflects both, but more the perimeter measure.
Q Well, looking at your Table 6, the perimeter measure, under Act 1 for Congressional District 12 is .218; do you see that? I am sorry, the dispersion.
A That is the lowest. Indeed consistent with our visuals, it is the lowest perimeter measure .053. In fact, it is the lowest perimeter measure on any plan for any district.
Q Let's look at the dispersion measure .218.
A Yes, it is also relatively low. I believe it is the third lowest on the Act I Plan.
Q But it is higher, isn't it, in terms of dispersion than the dead buffalo district in Plaintiff Exhibit 4, District 19?
A Which plan are we looking at?
Q Alt. 4 on Table 6.
A It is a little bit higher, .193 versus .218.
Q You don't know what algorithms were used to calculate

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the various dispersion and perimeter analyses that are here on Table 6?
A I don't know the specific algorithm, but I do know the standard calculations for these which I explained to the Court in my direct testimony. The dispersion measure is the ratio of the area of the district to the area of the smallest circumscribing circle.

The perimeter measure is the ratio of the area of the district to the area of the circle with the same perimeter.
Q Are you aware that Professor Richard Niemi identified 36 methods of calculating compactness?
MR. SMITH: Objection, Your Honor.
JUDGE NYGAARD: Why?
MR. SMITH: No foundation if Richard Niemi exists of who he is or where he is.
JUDGE NYGAARD: Sustained.
MR. KRILL: Well, the witness, Your Honor, is talking being standards.
THE COURT: Let's move on. Sustained.
BY MR. KRILL:
Q Let's turn to Table 7 in Plaintiff Exhibit 12. Did you prepare this table, Doctor?
A As I testified, I prepared the table. The information was provided to me.

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Q Was it provided to you in this format?
A I put it in this format, but these numbers were provided to me.
Q So you put it in this format. And did you assign the ranks that are here in Table 7?
A Absolutely.
Q You did?
A Yes.
Q All right. Now you have six different criteria that appear in the horizontal rows of Table 7; correct?
A Correct.
Q And then you rank them vertically by giving them numbers one through five; correct?

A There are five plans that I am comparing.
Q Right. What you are doing is trying to sum up the ranks for six different -- come to an aggregate rank using six different factors; correct?
A To show which plans come out better looking at all of the six factors. And you can look at each one of them individually by reading across the table.
Q Now reading across the table, in order for that to be meaningful, you have to assume that there are meaningful differences as you read across the table for each factor; correct?
A No. I am just looking at differences per se. I don't

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know what you mean by meaningful differences.
Q So you are not attributing any meaning to the differences for the different factors for each plan?
A I am attributing meaning. Remember what I was looking at was whether the Conference Plan as compared to the Alternatives was better on all of these measures to see if that could have been a justification for the construction of the Plan.
In addition, I was looking to see if these are potential indicators of a partisan gerrymander which, of course, I established with different and direct methods. So my concern was simply to see where the Conference Plan fell comparatively to other plans.
Q Let's look at your first compactness dispersion being scored. You have five different plans, five slightly different scores; correct?
A Five different plans, five different scores.
Q There is no statistical significance to those different scores; is there?

A There is indeed statistical significance to all of them because, remember, these plans were constructed based on 9,400 and some odd precincts. That is what reflects these scores. And they were not, of course, a random sample. They were consciously constructed by plan drawers.

Indeed, the differences among these plans is both

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substantively and statistically significant.

Q You are aware, aren't you, that in the professional literature compactness has been criticized as a factor that can actually be used to hide discrimination?

A Run that by me again.

MR. KRILL: Would the reporter read my question back, please?

(The question was read by the reporter.)

JUDGE NYGAARD: We are not involved in a discrimination situation here. What are you heading for here?

MR. KRILL: I had a standing objection to relevance. I agree we are not supposed to be into this area at all. I think the witness is talking about some form of partisan unfairness.

THE COURT: Unfairness, yes. What kind of discrimination? What are you getting at here?

MR. KRILL: Let me rephrase the question.

BY MR. KRILL:

Q Dr. Lichtman, have you reviewed the professional literature on compactness?

A I have read the professional literature, yes.

Q All of it?

A No, I wouldn't say I have read all of it.

Q There's a lot; isn't there?

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A There's a lot on all of these issues.

Q And is it fair to say simply that there is also a vigorous debate in the professional literature about the formulation and the uses of compactness analysis?

A There are debates in the literature.

Q Thank you. You also ranked these different factors vertically, but they are apples and oranges. You are trying to rank apples and oranges?

A You often do that when you have multiple indicators of a common factor. They are different, but they are put to the same two purposes that are already indicated to you as possible indicators but not definitive proof of partisan bias and secondly as possible justifications.

Therefore, it is useful simply to see where the Conference Plan ranks relative to the other plans. And no matter which factor you pick, it ranks either right at the bottom or close to the bottom.

Q Let's just use an analogy. Let's pretend that we are trying to compare, you and I, using your methodology; all right? And let's say that I have a 1960 DeSoto with big tail fins, and you have a Toyota.

On a measure of compactness, let's say I get a five, and you get an one. Do you see where I am heading?

A No, I don't. Not in the slightest.

Q Now the DeSoto would be less compact than the Toyota;

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wouldn't it? It always was.

A I suppose.

Q Fair enough. And let's go to splits. Let's say that I

have three divorces, and you have only one divorce in your past. So now you assign me a rank. I am at the bottom of the ranking. You are at the top again.

When we add all those up, what does a comparison of the compactness of cars and the number of divorces have to do with producing a common rank? It has nothing; does it?

A You have an inept analogy. Remember I said these are all put to a common purpose. A more apt analogy would be if our common purpose is the measure my socioeconomic standing relative to yours. And we looked at income. We looked at wealth. We looked at education. Those may be different factors, but they all go to the question of our socioeconomic standing just as these factors, while they are different, go to the common purposes to which I put them.

Q Well, the rank numbers that you use are simply arbitrary numbers; correct?

A No, they are not. They are based on the comparison of one plan to the other and therefore are not arbitrary, but reflect the ranking of the absolute numbers that I report on the table.

Q You could have used base five instead of base one to rank them; right?

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A But it would have come out the same.

Q You would have had a different source?

A No matter what base number I used, the Conference Plan still would have come at or close to the bottom. It is not an artifact of using one through five because there are five plans.

Q This kind of ranking system is used by Olympic --

A What?

Q This is similar to what Olympic judges use for ranking

athletes; isn't it?

A I have no idea the system used by Olympic judges so I can't comment.

Q There is nothing in the professional literature of political science that describes, much less peer reviews, something like your Table 7; is there?

A People do rankings all the time in the political science literature. I just gave you an example of a ranking on socioeconomic factors that might well be used in the social science literature.

Q Well, obviously social science literature will rank the same factor?

A No.

Q That is not what we are talking about.

A No.

Q I am saying is there any political science literature,

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that peer reviews a table such as Table 7 that takes different factors and attempts to rank them?

A Almost always, you are ranking different factors put to a common purpose. If they were all the same factors, there would be no point in ranking them. This is like a multidimensional scale commonly used in the social sciences.

Q Isn't it fair to say, Dr. Lichtman, this is something that you did, and you believe it serves a purpose, but a table like this has not been peer reviewed in the literature?

A Obviously, I didn't publish this particular table, but tables like this are used in the literature to rank, as I said, different factors going to a common purpose.

Q Can you cite one periodical that uses such a table that rank different factors and assigns common rank factors?

A As I said, I can't cite for this particular table. But

commonly within the social sciences, different factors like socioeconomic factors are ranked.
Q So the answer is that you can't cite it in the literature?
A Not to this particular table. I haven't published it.
Q Now in fact, your assemblage of methodologies has never been in its entirety as one package peer reviewed in the professional literature; has it?
A I have not published the particular testimony that I repaired today. But all the components of my testimony have

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been peer reviewed and discussed extensively in the literature.
Q But you just said you can't point to peer review literature for Table 7?
A I have not published Table 7. I agree.
Q Let's go to Table 8 on Plaintiff Exhibit 12. You can't calculate these percentages from Plaintiff Exhibit 13; can you?
A I have to look and see what Plaintiff Exhibit 13 is.
Q That is the set of numbers that Mr. Priest provided.
A You have to calculate it using the full set of 9,400 and some odd precincts because what you are looking at is the assignment of precincts to Congressional Districts.
Q All right. So you didn't actually do this calculation then in Table 8; did you?
A That's correct. As I said, this information was provided to me. I calculated the means and averages from the raw data provided to me, but I did not myself develop the raw data.
Q Are you saying you were given the raw precinct data by Mr. Priest?

A No. I was given the raw numerical totals, and I did the averaging and the calculation from that.
Q Are they anywhere in Plaintiff Exhibit 12?
A You mean the raw data?

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Lichtman - Cross

Q The raw totals. You just said you were given totals that were calculated from raw precinct data; correct?
A Right.
Q And the totals aren't here in court? Rather the raw precinct data aren't here in court today?
A No, but it is my understanding we provided you all the data upon which all my calculations are based.
Q That is not my understanding, Dr. Lichtman.
A Well, I believe I personally e-mailed you these numbers.
Q We do have those here. I would be happy to have you go through them and show me how they would provide you with the ability to perform these calculations. Shall we do that?
A I provided you what was provided me.
Q Would you care to admit that what you provided me would not enable you to perform these calculations?
A I did not myself perform the calculations in 9,427 precincts, that's correct.
Q And you didn't provide me with the data to do that either; did you?
A It was not provided to me,. But I presume that just as they have a political office, the Republicans have a political office. And I am certain since all these calculations were done on the Act I Plan, that the Republican side and Democratic side have the same information.

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Lichtman - Cross

You have your experts. And if you think there are problems, you could calculate your own results.
Q So your testimony is based on the presumption or let's say an assumption that the data you were given are correct; is that true?
A It is based on the presumption that the precinct level data that Mr. Priest compiled is correct, that's right. And on the fact that I have not anything from any other expert challenging questioning or contradicting it.
Q Let's turn to Table 9 of Plaintiff Exhibit 12. Did you prepare Table 9?
A Yes.
Q What did you use to prepare it?
A Again, that same precinct level data.
Q Which is not here in court today; correct?
A I do not have the stacks of precinct level data. It was compiled and provided to me.
Q Let's turn to Table i0 of Plaintiff Exhibit 12. Did you prepare Table 10?
A Yes.
Q What did you prepare it from; again, the same precinct level data?
A Yes. As I labeled, it is from the precinct level date.
Q Which is not here in court today; correct?
A I don't have it. I can't attest whether anyone else

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does or doesn't.
Q All right, now. This table says that you eliminated uncontested elections?
A Correct.

Q Now are you aware of how many uncontested Congressional elections – that is what it was you eliminated; right?
A Yes.
Q Congressional elections?
A Yes. I believe in one year, there are none. In other years, there are several. I think maybe up to four or five in some years. So it ranges from about none to I think about four or five and typically lower than that.
Q All right. Defense Exhibits 60 through 65, I ask the Court to take notice show that over the period of the decade in question, there were 16 uncontested elections. Does that sound about right to you, Dr. Lichtman?
A It sounds approximately right. As I said, it varied from none to about four or five. So 16 as a sum over -- how many elections did we say, 105? It sounds about right.
Q Let's turn to Plaintiff Exhibit 13. I think you will see this on about the eighth or ninth page. There is a list of 1992 to 2000 Congressional results?
A What page are we looking at?
Q I don't have a numbered set. It immediately follows a the page labeled 1992 plan splits. The page I ask you to --

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THE COURT: It is nine in mine if yours are numbered.
A I appreciate that, Your Honor. I could have been roaming through this for a long time. There we go.
BY MR. KRILL:
Q We can quickly count up the zeros on pages nine and ten in the Congressional results to count how many uncontested elections there were during this period; correct?
A Yes.
Q Is that 16?

A Do you want me to count? I am not disputing your number. One, two, three, four, five, six, seven, eight, nine, ten, eleven --

JUDGE RAMBO: What table are we on?

MR. KRILL: Page nine of Exhibit 13.

A I count 15, but I might have miscounted.

JUDGE RAMBO: Wait a minute. Excuse me. What table?

MR. KRILL: It is a table labeled 1992-2000 Congressional Results. It starts on page nine and then overlaps with page ten, Your Honor.

JUDGE RAMBO: Thank you.

JUDGE YOHN: Perhaps some of these things we can stipulate to.

MR. KRILL: It is all simple math.

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Lichtman - Cross

A I have no quarrel. I have no quarrel with your number.

BY MR. KRILL:

Q Okay. You didn't determine whether you were equitably – whether you were dropping an equal number of Republican votes and Democratic votes when you dropped the uncontested elections; did you?

A No. And that is not germane to the analysis.

Q Would it surprise you to learn that there were three times as many Republican -- races where Republicans were unopposed as Democrats?

A No, that would not surprise me.

Q Would it surprise you to learn that by dropping unopposed races, you actually dropped 1.7 million Republican votes and only 593,000 Democratic votes?

A No, that wouldn't surprise me. And as I said, it is

not germane to what I am doing here.

Q Let's turn to Table 11 of Plaintiff Exhibit 12. Those numbers by the way, Dr. Lichtman and Your Honors, can be calculated from Plaintiff Exhibit 13, pages nine and ten.

Table II, Plaintiff Exhibit 12, Dr. Lichtman, this is the only table that was generated using regression analysis; correct?

A Yes.

Q Now in doing regression analysis, it is an accepted

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practice in your field to report -

A Pardon me?

Q It is accepted practice in your field to report a constant?

A You might or might not depending on the purpose to which it is put.

Q Can you define a constant for the Court, Dr. Lichtman?

A Yes, in the regression equation with two variables as the formula Y equals A, a constant term that doesn't vary plus BX where B is the regression coefficient, in this case Y would be percent by precinct Democrat for Congress. X would be by precinct the means statewide vote. And therefore B would represent what I am looking at here, the change in Y for a one percent change in X. That is the change in percent Democrat Congress with change in percent Democrat statewide elections.

Q You don't have a constant report for Table 11; do we?

A No.

Q And again to compile Table ii, you used precinct level data that we don't have here; correct?

A I don't have it in my pocket.

Q Okay. Let's go to Table 12. Who prepared Table 12?

A I did.
Q What data did you use?
A I think we have already been through this. The

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precinct level data.
Q So we can't replicate your results here; can we?
A Yes, you can because I am quite certain that the Republicans have exactly the same precinct level data as the Democrats. That has been true in every state I have ever been in.
If you had any quarrel with any of these numbers, certainly your experts could have run them themselves. But I have yet to see any alternative numbers to a single number that I produced.
Q You heard Mr. Priest testify this morning; didn't you?
A Yes.
Q Did you hear him say that the issue of dead districts, change district boundaries was something that his office handled by making their own judgment calls about how to allocate voting results and population in the old precincts?
A Yes. And I heard, as I testified, it sounded like a standard procedure that I have seen in numerous states.
Q You don't know that Mr. Priest has shared his output with the Republicans; do you?
A No. But if the Republicans thought there was something wrong with what Mr. Priest produced, they could have produced their own to challenge it. And I have yet to see that either.
Q So that is another assumption on your part; correct?

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A It is not an assumption. I haven't seen it.
Q Well, you are assuming that they could have; isn't that your assumption?
A I am virtually certain given that there have been -- they would have to produced data for the plan that was passed, that Republicans have precinct level data and could do their own calculations on it. And that if there was some problem with this, something else could have been presented.
I am not a hundred percent certain, but I would say I am well over 90 percent certain that Republicans have precinct level data.
Q That is not based on your experience in Pennsylvania; is it? You don't work in the Legislature; do you?
JUDGE NYGAARD: Do we need to cover this ground? What am I learning? What are we learning from these questions is my question here? Mr. Krill?
MR. KRILL: Your Honor, the witness is quite certain of things that he has frankly no basis for being certain of. I will just move on.
JUDGE NYGAARD: If your point is that the data isn't in court, we know that. If it doesn't exist, perhaps we need another witness to say that it doesn't exist. This man hasn't seen it. I don't see where we are covering any new ground.
MR. KRILL: Your Honor, let me follow up on your

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statement. I have to say I cannot undertake to prove a negative. I can't prove data don't exist. It is the burden of the party with the burden of proof to demonstrate the affirmative of the proposition, and that hasn't been done in

this case.
JUDGE NYGAARD: Your point is though that because it is not in court, it doesn't exist I take it?
MR. KRILL: My point is that we have seen facial errors in the data. We have seen no underlying data base that would allow us to replicate.
THE COURT: Then you made your point. Thank you. You may proceed.
BY MR. KRILL:
Q Dr. Lichtman, Exhibit 13 was used by another witness for counsel in this case before you came onboard; wasn't it? You are aware of that; aren't you?
A I presume so. I am not sure what it was used for.
Q You know Dr. Lublin; don't you?
A You are talking about in another case entirely?
Q Yes.
A I can't vouch for what he used or didn't use in another case in which I wasn't involved.
Q Do you know Dr. Lublin?
A I do.
Q A colleague of yours at American University?

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A Yes.
Q And you are aware, aren't you, that he testified in Commonwealth Court using the same data that are in Exhibit 13?
MR. SMITH: It is not the same exhibit. It is utterly inappropriate for him to start cross-examining one witness on another witness' testimony in the midst of another trial.
THE COURT: Sustained.
BY MR. KRILL:

Q Dr. Lichtman, you didn't use all statewide races in Pennsylvania over the last decade in your calculations; did you?
A I used, as I said, all elections conducted at the same time, the same year as Congressional elections, plus one additional election for a position in Congress that was conducted in 1991.
Q Now answer my question, please.
A No. I was not aware of this, but I do understand that there are odd year judicial elections that are not in the same year like 1991, 1993, 1995. But I was also informed that that data does not exist in electronic form and thus is not usable, number one. And that number two, it is not a comparable type of election. That if there are more seats --
MR. KRILL: Objection. The witness appears to be

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going beyond the response of my question.
JUDGE NYGAARD: DO you want to restate the question. Maybe we can help him zero in on it.
MR. KRILL: My question was very simple.
THE COURT: Ask it again.
BY MR. KRILL:
Q You didn't use all the statewide races in Pennsylvania; did you, yes or no?
A No.
Q You have testified before, Dr. Lichtman; haven't you --
A Yes.
Q – that -- oh, many times. You testified to the effect that the more data you can get, the better; correct?
A That is only a general rule, but that doesn't always apply in particular situations.
Q You also testified in Michigan, didn't you, in the case

of Good v. Austin that --
MR. SMITH: Objection, Your Honor.
THE COURT: Let's hear the question first.
BY MR. KRILL:
Q – that you used several statewide elections for the State Board of Education because they were least likely to be influenced by controversial issues or high profile glamour candidates resulting in a truer indication of the voter's straight party preference?

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JUDGE NYGAARD: Overruled. We will hear the answer.
A I did use such elections among others in Michigan.
BY MR. KRILL:
Q And for that reason; correct?
A Yes. That and other reasons. They were also conducted at the same time, the same place as the Congressional elections.
Q And for an analysis like your did in Texas, you also used judicial elections; didn't you?
A I used all the elections conducted on the election year which included -- in the election year of the Congressional elections which included judicial among many others.
Q You are aware now that Pennsylvania has statewide judicial elections in odd years?
A Yes, but if I made explain --
Q Let me ask you a question.
A Sure.
JUDGE NYGAARD: Just a minute. You asked him a question. He answered it. Now you want to explain?
A I did, Your Honor, about these off year judicial elections. Number one, in off years, you have very different

turnout patterns of voters than you do in the years. And they are not available in electronic form. And they are multiple seat multiple candidate, not single seat elections.

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JUDGE NYGAARD: Next question.
BY MR. KRILL:
Q How do you know they are not available in electronic form?
A I asked Mr. Priest.
MR. KRILL: I move to strike that information as hearsay, Your Honor.
JUDGE NYGAARD: It's a very proper answer. You asked him how he knew it. He answered how he knew it.
MR. KRILL: Your Honor, this witness states facts that he would have the Court think he knows. And then we have to dig to discover what the hearsay is.
JUDGE NYGAARD: That is sometimes how it works out, counselor. You asked him a question, and he gave you an answer. You can't strike that. That is not hearsay. You are stuck with it.
MR. KRILL: Respectfully, Your Honor, as an matter of evidence, I don't think I am. I will stand on my motion to strike.
BY MR. KRILL:
Q Is it fair to say, Dr. Lichtman, that the Pennsylvania electorate over the last decade has been tending to become more Republican?
A I would have to see the data to prove that. I am not sure that is the case.

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Lichtman - Cross

Q So you don't know if there is a trend at all; do you?
A I am not aware of a significant trend one way or the other.
Q You haven't looked to see whether there is a trend?
A I did some sensitivity analyses on that. For example, redoing my analysis just based on 1998 and 2000 elections, and I did not find any significant difference in how the districts aligned in terms of the two parties.
Q You are talking about 1998 and 2000 elections?
A Yes.
Q But you didn't do such a sensitivity analysis for earlier elections to see whether there was a trend towards one party or the other; did you?
A But I already done 1992 to 2000. If there had been a significant trend, I would have found a difference between the average that covered the whole period and just spotlighting the last two years.
Q In Plaintiffs Exhibit 12, does one of these tables represent a sensitivity analysis that would disclose a trend over the last decade?
A No. I was just responding to your question.
Q So your analysis isn't here in any sort of hard copy form; is it?
A That's correct.
Q And you didn't provide it to the defendants prior to

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Lichtman - Redirect

this hearing; did you?
A No.
Q Let's take a look again at Plaintiff Exhibit 13 at page 11.

A Did you say 11?
Q Yes, page 11.
A (Witness complies.)
Q If there are misplacements of numbers Congressional District by Congressional District in these reaggregations, you wouldn't be able to tell that; would you?
A In other words, if there are errors in the precincts underlying this?
Q Yes.
A You would not be able to tell this from that table.
MR. KRILL: May I have a minute to consult with counsel?
JUDGE NYGAARD: Yes.
MR. KRILL: I have no further questions.
THE COURT: Thank you. Do you have any redirect?
MR. SMITH: Just one question, Your Honor.

REDIRECT EXAMINATION

BY MR. SMITH:
Q Dr. Lichtman, can you refer to Defendant Exhibit 89 which is the individual statewide election?
A Yes.

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Q I believe you were going to comment so I will give you the opportunity. Is it your opinion that looking at these elections one by one leads to a conclusion that the districts drawn in Act I are fair or unfair in terms of their partisan impact?
MR. KRILL: Objection, leading.
JUDGE NYGAARD: You may give your opinion.
A Thank you. Your Honor, my opinion is that looking at them one by one and drawing what is called a seats vote curve which show essentially the same thing as my seats votes

analysis; that the plan is tilted in favor of the Republicans in that with substantially lower percentages of the average vote, they are able to get more seats.

For example in the Treasurer 2000 Hafer versus Knoll, that is virtually a 50/50 election. The Republican is ahead about 51, 49, and yet 14 of the seats have a majority of Republicans.

In contrast, for example, the Bush/Clinton election in 1992 where Clinton wins approximately 56 percent of the vote, much more on a percentage basis than Haler, and yet Democrats win only eleven districts; three fewer districts with five percentage points more than the vote.

And 56 percent is a very substantial percentage in terms of what you might expect in Congressional percentages which have been pretty close to the 50 percent mark in the

state of Pennsylvania.

So you have got to look at the disparity between seats and votes and not merely at whether whoever wins the majority wins the majority of the seats.

MR. SMITH: Nothing further.

THE COURT: Recross?

MR. KRILL:. Thank you, Your Honor.

RECROSS EXAMINATION

BY MR. KRILL:

Q With respect to that conclusion that you just rendered, Dr. Lichtman, have you tried to determine whether there is a significant difference between let's say the National Republican Party and the Pennsylvania Republican Party and their respective candidates and how well they run in Pennsylvania?

A Run that question, again. I am not sure I understood

it.

MR. KRILL: Would you reporter read it back, please?

A I actually think I understand the question or at least I can answer it as best I can having thought about it.

You recall in my direct testimony, I reported that I did do an analysis that eliminated top of the ticket that would limit the results strictly to internal Pennsylvania state candidates. I think we had ticked them off - Attorney

General, Treasurer and Auditor and found the same pattern of results.

BY MR. KRILL:

Q Well, you are not saying, are you, that there is such a thing as a generic Republican candidate or a generic Democratic candidate?

A No. What I am saying is when you look across all the 19 elections and you see that Republicans and Democrats are equally divided, you likewise see that Republicans have many more seats in terms of having a majority of that average than do the Democrats under Act I which was further illustrated by the testimony I presented in response to your cross.

Q Let's take a look. Let's compare one national Republican against a state Republican. Let's look at the Bush/Gore race and the simultaneous Santorum/Klink race. I would ask you to look at Exhibit 89 for that purpose.

A Okay. Are we looking at 2000 now?

Q 2000.

A Yes, indeed.

Q So in the same year, do you see Exhibit 89's results?

A I am there, counsel.

Q In the same year 2000, don't you have a national

Republican, namely Bush, losing Pennsylvania and a state Republican, namely Santorum, winning Pennsylvania by a margin that almost equals that of Vice-President Gore?

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Lichtman - Recross

A Precisely. And that is my point. In the 2000 Presidential election, which has the same margin as the Senate elections, the Democrats have a majority in ten seats; whereas in the 2000 Senate election, the Republicans have a majority in fifteen seats for a gap of five seats.
Q But in the very same election year 2000, do you see that in the Auditor General's race Auditor General Casey beats his Republican opponent and picks up 15 hypothetical seats?
A Yes, but he is beating his Republican opponent by about 64 percent; whereas in the U.S. Senate race, Santorum is beating his Democrat opponent barely and picking up the same number of seats. That is the point, the disparity between seats and votes which so heavily favors the Republicans.
Q Don't these statewide election results that purport to be reaggregated by you actually show that in Pennsylvania under Act 19, a good candidate can win any race, almost any race, except for let's say Districts 1 and 2 in Philadelphia if the candidate is a Republican?
A I don't see how these show that because these do not -- these particular tables do not track Congressional election results. We can look at that. But I said in my testimony, I am simply looking at the effects of redistrictings.
Redistricting does not cancel out politics. It is possible in the odd case that an individual candidate could

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Lichtman - By the Court

overcome the adversity of redistricting.
MR. KRILL: I have no further questions.
JUDGE NYGAARD: All right. The Court may have some.
BY JUDGE YOHN:
Q You analyzed all of this in terms of the voting results for 19 elections. Have you done anything analyzing it in terms of party registration?
A I have not.
JUDGE NYGAARD: That was my question. Good question.
A I have not looked at party registration. I think voting results more closely correlate with voting results. And we saw through the regressions, there was a one to one correspondence between my statewide averages and my Congressional results.
So I am confident I have got a very good yardstick and don't need to turn to registration
BY JUDGE YOHN:
Q How do you know it is better if you haven't done it? How do you know that voting is better than registration if you haven't done registration?
A I don't -- I was speaking from general knowledge. What I do know is I already have a one to one correspondence. I am not sure how adding anything to that would improve the

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relationship.
MR. KRILL: Your Honor --
BY JUDGE NYGAARD:
Q Just a moment. Taking that one more decimal, if you

will, would you not learn anything more about these districts if you compared the voter registration and how they are partied up with the voters and how they vote and that sort of thing?

A I think you would learn some things. You would learn the relationship between registration and voting. And we know as a general proposition, it is not a one to one relationship.

We might learn here in Pennsylvania what the relationship is between registration and voting. So yes, you could learn that, but that was not the purpose of my inquiry.

Q You are saying it would add nothing to your opinion as to the fairness or unfairness I think was the ultimate question asked of you by counsel.

Would it add nothing to that; is that what you are saying?

A I am not saying it would be illegitimate to look at it. I have not seen anyone presented another analysis looking at that and suggesting anything different.

Q You have never done that in any of your other --

A No. I have never used voter registration per se as my

analysis that I can recall. A lot of states don't even have voter registration by party.

But to the best of my recollection, in all of the states I have actually looked at actual votes rather than -- but I wouldn't say if someone wanted to do that analysis, it would be illegitimate. I would certainly look at it. I have not seen in this litigation anybody having done such an analysis.

Q Because of the one to one correlation or almost –

A Almost.

Q -- with the --

A – Congressional vote.

Q – and the actual vote, you don't think that would add anything to your mix at all?

A I am not so arrogant to say doing something else wouldn't add anything. But I would say I am confident my results accurately reflect the purposes that I am looking at here.

JUDGE NYGAARD: That is fair enough. I have no further questions.

MR. KRILL: Your Honor, may I recross just to pick on the Court's question on voter registration.

JUDGE NYGAARD: No. We have done cross, recross questioning by the Court. You may step down.

A Thank you, Your Honor.

JUDGE NYGAARD: We still have some more time. How are we doing?

MR. SMITH: We have one more witness. We may have a very short one in the morning Congressman Mascara.

At this point, Mr. Spiva is going to call our next witness Larry Ceisler.

MR. SPIVA: Plaintiffs call Mr. Larry Ceisler.

LARRY CEISLER, called as a witness, being duly sworn, testified as follows:

THE CLERK: Would you state your name, please?

A Larry Ceisler.

THE CLERK: Thank you,

BY MR. SPIVA:

Q Mr. Ceisler, where do you reside?

A Philadelphia, Pennsylvania.
Q What is your educational background?
A I have a bachelor's in political science from American University in Washington, D.C. I attended the University of Pennsylvania School of Law and graduated from Duquesne University School of Law.
Q Can you briefly describe your professional background with an emphasis on your involvement in political activities in the state of Pennsylvania?

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Ceisler - Direct

A From the time I was a young boy in western Pennsylvania in Washington County, I was involved in politics. I was elected to the Democratic Mid-Term Convention at the age of 18. I was a delegate to the Democratic National Convention.

I worked on Presidential elections in 1976 as a volunteer for Birch Bayh and Morris Udall. I worked as a television producer in Pittsburgh KKTV in Pittsburgh where I did a lot of work on news and political issues.

When I moved to Philadelphia to work in television at KYW Television, I also worked in politics. When I left KYW Television, I went to work for a Mayor W. Wilson Goode. I was a Deputy Campaign Manager for his reelection effort in 1987.

A few years after that, I went to work in a partnership in a political consulting firm called Keystone Strategies. There we worked on several campaigns on all levels -- state, Congressional, local. I also worked -- I worked in Senatorial campaigns.

And from there, I started my own firm where I was doing some political work. For instance, I have a contract with the House Democratic Caucus as a communications consultant. I have worked in several campaigns since then.

But my practice now though it is political in nature is more issue oriented, grass roots lobbying, communications and advertising.

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Ceisler - Direct

Q What time span did you cover from when you graduated from American University through the present? Let me ask that a little more clearly.

When did you graduate from American University?
A 1979.
Q So you have been involved in political activities in Pennsylvania since that time?
A Since I moved back to Pennsylvania from Washington, D.C., yes.
Q When was that approximately?
A 1980.
Q And you mentioned that you have worked or consulted on a number of campaigns. Approximately how many campaigns have you worked and consulted on?
A Approximately 50 or more.
Q And were those positions generally paid positions?
A For the most part, yes. Sometimes, I would work for free.
Q And can you describe generally what you did for those campaigns, either consulting, managing, directing?
A When I work in a campaign as a consultant, I am responsible for all facets of the campaign though I don't work in the campaign on a daily basis. I have campaign manager there.

But what I do is I direct what the message is

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going to be, what the free press is going to be, what the paid media is going to be. We work at polling. We work at what the grass roots effort is going to be, what the get out the vote effort is going to be. Basically all facets of the campaign.

Q And have all those campaigns that you have worked on all have been within the state of Pennsylvania?

A Yes.

Q Have you only worked for Democrats?

A No, I have worked for Republicans.

Q Which Republicans have you worked for?

A I have worked for Senator Arlen Specter. I have worked for Councilman Frank Rizzo. I worked in a State Senate Campaign for Bruce Marks.

Q In those campaigns were you providing them with similar type services as you do with respect to Democratic candidates that you worked for?

A I wasn't a general consultant in those campaigns. It was a much more narrow focus what I did. But work that I did in those campaigns I would do in the Democratic campaigns.

Q Generally, what did you do for them?

A For?

Q For the Republican candidates.

A I helped them get Democratic votes.

Q You mention that you have been a political commentator

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on television stations. What do you do exactly in that role?

A For the past several years, I have been a paid political analyst for Fox television in Philadelphia. And then I am also used quite frequently by newspapers and

magazines around Pennsylvania and also around the country to be quoted and used as an analyst on political stories and governmental stories.

Q Do you ever have to do projections, the way you think various elections are going to come out in the state in that role?

A Yes. Sometimes they put me on the spot, yes.

Q What types of information do you look at in doing that?

A The same things I would look at in a campaign. I would look at polling data. I would be talking to people in those areas to see what they say, what is happening on the ground. I would be talking to the campaigns.

I would be reading newspapers. I would be looking at how much people have raised. I would be looking at what the candidates are like themselves, what the issues are, whether there is an incumbent running or not, what are the characteristics of the area.

I would look at voter performance. I would look at voter registration.

Q And are those the types of things that you have been looking at in your various roles in Pennsylvania and various

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Ceisler - Direct

parts of the state over the last twenty years?

A Yes.

Q Mr. Ceisler, you have been retained as an expert to do a political analysis for the plaintiffs in this case?

A Yes, I have.

Q What were you asked to do?

A I was asked to look at data and to project who or what party would prevail in the 19 Congressional Districts as drawn by the Conference Plan.

Q Were you only asked to look at data?

A No. I was basically asked to -- just as I would do on TV or in a campaign, to look at these elections, to look at the areas and see how they would -- people would vote there.

So it is a little more than hard data. It is the characteristics of the area, the people who are running, elements such as that.

Q I take it you are familiar with Act I which is up on the board there, Plaintiff Exhibit 2?

A Yes, I am.

Q What did you conclude about the likely impact of this map if it is allowed to be used in the upcoming Congressional elections?

MR. KRILL: Objection, Your Honor.

JUDGE NYGAARD: Reason?

MR. KRILL: I don't believe that they have

established a foundation for this person to offer opinion evidence. I don't think they have established a methodology, much less a reliable methodology, for him to render an opinion.

MR. SPIVA: Your Honor, we have had a Daubert hearing on this.

JUDGE NYGAARD: This has gone on already beforehand in your hearing before this one. Overruled. You may answer. Do you need the question restated to you?

A No. I think I understand it. I think this map is going to be good for Republicans in Washington, D.C. but bad for Pennsylvanians.

I think in terms of the numbers, they are either – it is either going to be fourteen to five Republican or thirteen to six.

BY MR. SPIVA:

Q Let me take those statements one at a time. What did you mean when you said you thought it was going to be good for Republicans in Washington but bad for Pennsylvanians?

A Pennsylvania is going to lose clout in Washington, D.C. One thing I didn't mention is that I worked in a Congressional office in Washington, D.C. I worked for Dr. Thomas Morgan who was a Congressman from southwestern Pennsylvania.

I see how the effect of seniority has on the process in Washington. And, for instance, losing Congressman Borski is not only going to be bad for southeastern Pennsylvania, but it is going to be very bad for the state as a whole.

I think it is also -- the way the map is drawn is counties are going to be split. Municipalities are going to be split. There's going to be a lot of competition for federal dollars. There's going to be areas that are going to be shut out of the process because they are far away from the base of the Congressman who I believe is going to be elected.

So I think all in all, it is going to be bad. It is going to be bad for the state.

Q Now let me turn to your opinion that this map will result in 14 Republicans being elected and five Democrats. Can you identify the five Democratic Congressmen that you think would be able to succeed in being reelected under this map?

A Congressman Brady and Fattah in Philadelphia, Congressman Kanjorski, Congressman Doyle, and the winner of the Mascara/Murtha race.

Q Why don't we start with the Murtha/Mascara race? As your answer suggested, I take it Congressman Murtha and Congressman Mascara are running against each other in the new

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Congressional District 12?
A That's correct, even though Congressman Mascara does not live in that district.
Q Okay. Congressman Mascara's home is actually in Congressional District 18; is that right?
A In Charleroi, that's right.
Q In your judgment, what are the political forces that led Congressman Mascara to run against Congressman Murtha in Congressional District 12 rather than Congressional District 18?
MR. KRILL: Objection, Your Honor. There is no foundation for that question. I think that the question is going to elicit hearsay from this witness.
JUDGE NYGAARD: Overruled.
A As a person who worked in Congress, I find it is astounding that an incumbent Congressman faced with redistricting would choose to run against another incumbent Congressman rather than run in what is a newly created seat.
So Congressman Mascara, he can't win in the seat where he currently resides.
BY MR. SPIVA:
Q Why is that?
A The Republican candidate is going to be Senator Murphy. And Senator Murphy is definitely a favorite of the Republicans in Washington, D.C.

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In fact, the Majority Leader of the Republican Congress Dick Armey is going to be coming to that district in a couple of weeks to campaign for Mr. Murphy. Mr. Murphy's seat is wholly contained in that Congressional District.
MR. SPIVA: May I just approach the witness, Your Honor, to put up an exhibit?
JUDGE NYGAARD: Sure, sure.
MR. KRILL: Your Honor, I move to strike portions of that answer. As I thought, there is no foundation for him to say who the candidate will be or for what a Republican in Washington will do. He just -- it popped out of his head.
JUDGE NYGAARD: Okay. I will overrule. We are noting your objections and we have the opportunity of parsing through this when we make our decision. Overruled.
BY MR. SPIVA:
Q Mr. Ceisler, what leads you to the conclusion that Senator Murphy is going to run in the new Congressional District 18? What is your basis for saying that?
A He has announced he is going to run. I read in the newspapers he is going to run. I don't think anybody is making it up. I don't think that the Majority Leader is coming to Pittsburgh to go to a Pirate game.
Q Now, Mr. Ceisler –
JUDGE YOHN: Especially in March.
A Opening day gets a little closer every year.

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BY MR. SPIVA:
Q I have put up on the board what has been marked Plaintiff Exhibit 2D. Can you identify that?
A That is the 18th District, and it shows how Senator

Murphy's Senatorial District is wholly contained in the district.
Q Now looking at that diagram, it appears that Senator Murphy's District is only a small geographic part of Congressional District 18; isn't it?
A Geographically, yes. But more people live in that -- that is suburban Pittsburgh. It is a dense population.
Q Okay. Might next question was going to be why given the relative size you think that Senator Murphy is likely to win that district?
A Well, Senator Murphy is likely to win that district because a Democrats from Washington County tends to be a more conservative, pro life voter is just not going to play well in the suburban district. Congressman Mascara represented parts of that district. He never did well with those voters.
The Democrats don't have even a candidate to run in that district.
Q What changes did Congressional District 18 make to the existing – the 1992 map in terms of the demographics of Congressman Mascara's District.

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Ceisler - Direct

A Traditionally, that district over the years has been a southwestern Pennsylvania district -- Fayette, Greene, Washington County. It has gotten a little more suburban over the years.
Basically what the district was, it was an older rural, conservative coal mining district.
Q Let me put up -- I better take one down before I try to put another one up. Let me put up what has been previously marked and admitted as Exhibit 1 which is the Plan -- the 1992 Plan.

Is that Congressman Mascara's current district under that plan, District 20?
A The 20th District, yes.
Q Do you know approximately where Congressman Mascara's home is in that district?
A He lives in Charleroi.
Q Can you point out about approximately where that is?
A It is around down here.
Q Just for comparison purposes, let me put up what has been previously marked and admitted as Plaintiff Exhibit 2 which is the Act I Plan.
Can you point again to about where Charleroi is on this map?
A It must be down around here somewhere because the district breaks. As Congressman Mascara testified in the

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Ceisler - Direct

State Court, if he goes across the street, he is in another district.
Q I am sorry to have you getting up and down. What portion of his district approximately has been taken out of – what portion of the district under the 1992 Plan has been taken out of his district under Act 1?
A They took out a lot of into the 18th, they took out a lot of Washington County.
Q Okay.
A Which was Congressman Mascara's base because he has been an elected official there since I was a little kid. He was County Controller and County Commissioner.
Q Now can you tell us the other Democrats who in your view would not succeed in winning reelection in addition to either Congressman Mascara or Congressman Murtha?
A They have put Congressman Borski together with

Congressman Hoeffel. Congressman Borski has announced that he is not going to seek reelection unless this map is thrown out.

Congressman Borski obviously, he knew he couldn't win, which I agree, because that district was set up for --

Q Let me stop you. We will go through the individual districts. If you can list the incumbents -- the Democrat incumbents that you believe would not win under Act I, and

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Ceisler - Direct

then we will go through them one at a time.

A Congressman Holden will lose reelection. You are also going to lose either Murtha or Mascara. And you will also lose - even though Congressman Coyne has announced his retirement, if that seat was intact, a Democrat would have run and won in that seat. So the Democrats would have lost that seat also.

Q Okay. What about -- you started to talk about the district. In terms of Borski -- Congressman Borski and Congressman Hoeffel, what is your opinion with respect to if either of those Congressmen are likely to be reelected?

A Congressman Borski, I do not believe -- I think he would have won the primary against Congressman Hoeffel, but he would have lost the general election.

Congressman Hoeffel if he wins the primary -- and we still have to see if a Democrat from northeast Philadelphia decides to run against Congressman Hoeffel. But Congressman Hoeffel is successful in the primary, I think he probably has a little better than a 50/50 chance of winning reelection.

That is why when I said the 14/5 and the 13/6, the 13/6 was if Congressman Hoeffel is successful in his

reelection.

Q Okay. That is in the new Congressional District 13?

A Yes.

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Ceisler - Direct

Q Is there a Democrat from northeast Philadelphia who announced that he is going to run assuming Congressman Borski doesn't change his mind?

A There is a Democrat who is strongly considering to run. I believe that is legitimate because I was very surprised when Congressman Borski announced his retirement last week, he did not endorse Congressman Hoeffel for reelection.

The reason he did not was because he wanted to keep the door open for another Democrat from northeast Philadelphia.

Q Okay. Stepping back for a minute, you stated you testified that Congressman Borski would have won the primary had he run, and that another Democrat from northeastern Philadelphia would likely win if that Democrat were to enter the primary.

What would the basis of that be? Why do you believe that?

A The majority of Democrats in the new district reside in northeast Philadelphia. And in primaries in Pennsylvania, the location where the person lives is on the ballot. And Philadelphians -- actually just like a lot of Pennsylvanians tend to be very parochial. They would have voted for a northeast Democrat. SO he or she would have beaten Congressman Hoeffel.

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Ceisler - Direct

Q Is there something that you have seen in your experience to support that view that Philadelphians would tend to favor the northeastern Philadelphian?
A Yes. Philadelphians -- in Pennsylvania, geography, whether it is statewide elections, it is very important. And people in northeast Philadelphia, they have - basically a lot of people leave Philadelphia. So the people who stay are pretty loyal to the city. They would vote for a Philadelphian.
Also that Democrat would tend to be a pro life Democrat. And those people in that district are pro life.
Q Assuming that you are correct and that a pro life Democrat from northeastern Philadelphia were to win the primary, why is it your opinion that he would lose the general election in the new Congressional District 13?
A Actually, I can put a name on that northeast Democrat. That would be Joe Martz, who is the former Managing Director of the City of Philadelphia.
The reason Joe Martz would lose is because then the district when you run in a general election, of course, it is a majority Republican district that tends to be moderate, tends to be pro choice, progressive. So someone from northeast Philadelphia would be out of sync with that district.
Again, a lot of those people who live in

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Ceisler - Direct

Montgomery County, they left Philadelphia. There is somewhat of a bias against Philadelphia by those people.
Q Now is there a Republican who is planning to run in the election – in the general election in the new Congressional

District 13?
A Melissa Brown is the Republican candidate who is favored by the party. She is the presumptive Republican nominee.
MR. KRILL: Objection, again, hearsay. Move to strike.
THE COURT: Overruled.
BY MR. SPIVA:
Q What is the basis of your saying that she is favored by the party?
A She has letters of endorsement from all of the region's Republican Congressmen, also from Senator Santorum. She is using Senator Santorum's media consultant to run her campaign. And also the Montgomery County Republican Committee is going to endorse her.
Q What is her position on abortion -- on the abortion issue?
A She is pro choice.
Q And what are her chances of beating a pro life Democrat from Philadelphia?
A Excellent.

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Ceisler - Direct

Q Let me put up another exhibit, a blow-up of the Philadelphia region. This has been previously marked as Plaintiff Exhibit 2A. Let me direct your attention to the new Congressional District 13. There are two incursions from Congressional District 8 into Congressional District 13, one right here around Hatboro?
A Hatboro.
Q I am not from Pennsylvania and Upper Mooreland and another one over here in northeastern Philadelphia I believe.

Have you examined those two incursions before, Mr. Ceisler?
A Yes. Congressman Hoeffel likes to call that the greenwood gash.
Q Is this what you are referring to here, this first incursion?
A I think it goes into Horsham if I am not mistaken. I would have to refresh my recollection and check the map.
Q Do you have an understanding of what the political effects of those two incursions are?
A Yes. They take Democratic voters away from the Hoeffel/Borski seat.
Q who is the Congressperson for Congressional District 8?
A Congressman Greenwood.
Q He is a Republican?

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Ceisler - Direct

A Yes.
Q So what is your analysis of the political effects that taking Democrats out of Congressional District 13 will have?
A Well, what they have done is they have taken -- they have taken strong Democratic performance areas, and they have really hindered the chances of any Democrat winning that seat.
Because what is going to happen in the Hoeffel/Brown race, it is going to be a close race. You take a few thousand people out who tend to vote Democratic, and you have hurt the Democratic candidate.
THE COURT: Are you going to be able to finish direct in about fifteen minutes, counselor?
MR. SPIVA: I think almost, Your Honor.
JUDGE NYGAARD: Okay. Good. Go to it.
BY MR. SPIVA:

Q Let me ask you for your analysis of the new Congressional District 17 which is also largely pictured on this map, the one I put the big map back up.
In this area, who are the two Congressmen who are paired in that new district?
A That is Congressman Holden and Congressman Gekas.
Q What is your analysis of who is likely to win that district?
A I believe Congressman Gekas will win that race.

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Ceisler - Direct

Q Why is that?
A That is for a couple of reasons. Number one, his district -- more of his former district is contained in the new district. That is number one.
Number two, the media market for that district is Harrisburg. And Congressman Gekas has represented Harrisburg so he has been a fixture on television here. So he has much better name recognition.
Q I think you stated this, but I just want to make sure the record is clear. How does the percentage of their old districts -- Representative Gekas' old districts and Representative Holden's old district, how does that compare in the new district?
A I believe it is 60/40 Gekas to Holden.
Q You mean 60 percent of Representative Gekas's former constituents are now in the Congressional District 17?
A Yes.
Q And just briefly, just pointing your attention to District 6 under this map, is that an open seat?
A That is a newly created district.
Q And has anyone announced their intention to run for that seat?

A There are a few candidates, yes.
Q Who in your view is likely to win that seat?
A Senator Gerlach.

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Ceisler - Direct

Q Why is that?
A Senator Gerlach, his district -- his district is in that district. Also, I believe a Republican will win that district. And Senator Gerlach will probably run uncontested in the primary.
Q Let me just to see if this illustration blow up helps. This is an exhibit which has been marked Exhibit 2C.
Can you explain to the Court which portion of the new District 6 coincides with Senator Gerlach's current house -- excuse me -- current State Senate District?
A It is the part in orange which is in Chester County which is going to become the political base of the district. The district goes unbelievably through the City of Reading to Lower Merion Township, which is a suburb of Philadelphia, through Chester County.
Q You say unbelievably. Why do you say unbelievably that it spans that distance?
A Because we are losing seats in Pennsylvania, and these map makers decided to create a new seat, number one.
Number two, there is not much commonality between the City of Reading and Lower Merion Township. Lower Merion Township has actually voted -- even though it is Republican Township, it has voted Democratic in a lot of elections. And the map makers obviously wanted to get that area out of the Hoeffel/Borski seat.

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Ceisler - Direct

Q Coming to your opinions about who is going to win these various districts currently held by Democrats, have you reviewed data on how statewide candidates have performed in those districts?
A Yes.
Q Are those data consistent with conclusions that you have stated today?
A Yes.
Q Have you also looked at voter registration data for the new districts under Act 1?
A Yes.
Q Did those data match up with the conclusions you have stated today?
A No.
Q Can you tell us in your opinion why they don't?
A Well, voter registration is not a real important element. Because as a political consultant, I find voter registration figures in Pennsylvania to be very unreliable for a number of reasons -- either motor voter, lack of purging.
I know when I send out direct mail, we get a lot of our mail back because people just aren't there. And also people a lot of times don't vote their registration. They are either too lazy to change, don't want to change. But that is just the case.

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Ceisler - Direct

Q Are there lot of Reagan Democrats in certain parts of the state?
A Yes, there are.
Q How could you define a Reagan Democrat?

A A Reagan Democrat resides in western Pennsylvania.
Q In terms of their political actions as opposed to where they live.
A They are Democrats who were basically FDR Democrats. Their parents were Democrats. They tend to be older. But they are also conservative. They are pro life. They are sportsmen, working class people. And Ronald Reagan captured them, and the Democrats have not been able to get them back.
But they don't change their registration. In a local race, they may vote Democratic. But in a national race, they will vote Republican.
Q Okay. And this next question which I think is nearly the last --
JUDGE NYGAARD: Great.
A It better be your last.
BY MR. SPIVA:
Q It may help to get the big map back up. This is Plaintiff Exhibit 2 which is again Act I, the whole state.
Do you have an opinion of what the likely political effects or what the effects this map will have on campaigns for Congress over the next decade if it is left in

place?
A I think incumbents are going to stay in place. So the people who win these elections unless they move on to other offices or retire, they are going to stay in place. These campaigns are going to become much more expensive because they are going to go across several media markets.
Ideally, you would have one Congressional district in a media market. The way it is drawn, you can look for instance at the Shuster seat which is number nine. You have the Hagerstown media market. You have Harrisburg, Altoona,

Johnstown and the Pittsburgh media market. That goes for several of these seats.
So what is going to happen is the bar is going to be very high for challengers because they are going to have to raise money, and it is going to be very hard to have name recognition.
Q And when you said at the beginning that incumbents were likely to stay in place, you mean incumbents who are currently in place or incumbents who are elected under the new map, Act 1?
A The incumbents who are elected under the new map.
MR. SPIVA: I have no further questions, Your Honor.
JUDGE NYGAARD: All right. This is a good time to adjourn for the day. I will give you time to load your guns,

and you can come at them in the morning.
We will adjourn at nine o'clock tomorrow morning when we will resume with the cross-examination of our witness here.
THE CLERK: Court is adjourned.
(Whereupon, the proceedings were concluded.)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, et al., :
Plaintiffs :
:
v. : NO. I:CV-01-2439
THE COMMONWEALTH OF :
PENNSYLVANIA, :
Defendants :

TRANSCRIPT OF PROCEEDINGS
REAPPORTIONMENT NONJURY TRIAL
VOLUME 3
(Pages 220 through 355)

BEFORE: HON. RICHARD L. NYGAARD, Judge
HON. WILLIAM H. YOHN, JR., Judge
HON. SYLVIA H. RAMBO, Judge
DATE: March 12, 2002
PLACE: Courtroom Number Two
Federal Building
Harrisburg, Pennsylvania

COUNSEL PRESENT:
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JUDGE NYGAARD: Before we begin, what I would like counsel to do -- and you are well staffed at your individual tables -- is to assist the Court as we begin to prepare what you would propose to be findings of fact for this Court to consider.

We want you to begin - - as we go along, I was mentioning to my colleagues I am sure they do about the same things as I did. I just made up my findings as we went along. We can't do that inasmuch as we have to confer on

this and reach a consensus.
So it would be helpful to the Court if you do the proposed findings and conclusions of law if you want to and then your arguments that you want to make at the conclusion of the evidence in writing. So we can use the full day for testimony. We want these filed by 4:00 PM on Friday. You don't have a lot of time. That is why I suggest you begin as we go through the trial.
If there are no other items to come to the attention of the Court, why don't we just proceed with your cross-examination of this witness, Mr. Krill?
MR. KRILL: Yes. Thank you, Your Honor. There is one thing I would like to note for the record. I believe that by yesterday afternoon later in the day, I misspoke and referred to Act I as Act 19 several times. I don't think our General Assembly has gotten that high in its numbering this

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Ceisler - Cross

year.
THE COURT: It went unnoticed by me. I thought you were talking about the same law. Not a problem.
MR. KRILL: Thank you.

CROSS EXAMINATION

BY MR. KRILL:
Q Mr. Ceisler, who is paying your fee today?
A I believe Jenner and Block. I am billing Jenner and Block.
Q You say you believe. It sounds like you are not sure who is paying your fee?
A I have been told to submit an invoice to Jenner and Block.
Q Who will be paying it, out of whose pocket?
A I believe it is Congressional Democrats.

Q Now you described yesterday for THE Court things that you look at when you are trying to prognosticate about election outcomes. Do you recall that?
A Yes, sir.
Q And tell me if I misspeak or misremember. The first thing that you listed was polling; is that correct?
A When I am working in campaigns or I'm analyzing for television whatever, if I have access to polling, that is a good thing to access.
Q The second thing you listed was what people say; is

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Ceisler - Cross

that correct?
A Yes. I talk to -- I talk to people who are involved in the process involving campaigns. I talk to reporters. I talk to people who do fund-raising. I talk to the candidates themselves. Human intelligence is very key.
Q So is it fair to say that you rely on that to a substantial degree?
A Well, I think there were other elements that I mentioned also. Did you want to go down the list?
Q Yes. Newspapers?
A I read a lot of newspapers. With the Internet, you can read newspapers all over the Commonwealth on line.
Q And, of course, you give a healthy discount to the veracity of what you read in the newspapers; don't you?
A Well, I look at that through a filter. Everything is together, Mr. Krill. When you talk to people and you talk to somebody who tells you one thing and you believe them, and then you read something opposite in the paper, I tend to believe what I have heard.
But everything you do is taken together as through a filter.

Q So is it fair to say you don't believe everything you read in the newspapers?
A I think that would be fair to say.
Q Is it fair to say that you don't believe everything you

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hear on television?
A Except when I say it.
Q And when you are on television, do you ever engage in point/counterpoint counterpoint debates with people in your field about different opinions?
A Not on Fox I don't.
Q Have you done it in your career?
A I think one or two times I have been on some panel shows, yes.
Q And you have encountered people in your field who have different opinions than you do; correct?
A Of course.
Q You say you also look at issues?
A Yes, sir.
Q Issues are an important part of any political campaign; aren't they?
A One would hope they are.
Q Are they?
A I believe they are.
Q And you said you look at voter registration also?
A That is down on the list because I don't have a lot of confidence in voter registration figures in Pennsylvania.
Q Is that because Pennsylvanians are to a large degree ticket splitters?
A No. That has nothing to do with it. I think I said

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yesterday why I don't have confidence in voter registration. It is because of the factors such as motor voter, a poor purging effort on the part of the County Election Boards.
I think I talked about how when I do direct mail or telemarketing how you find a lot of the addresses are not good, and they come back.
Q You also find that sometimes those not good addresses end up voting on Election Day?
A I have never checked that.
Q And you are aware though in Pennsylvania there is a fairly large amount of ticket splitting that goes on; aren't you?
A Pennsylvania is probably not unlike any other state, but yes, sure.
Q So voter registration doesn't really tell you to a certainty whether a voter is going to vote for the party for which the voter is registered?
A That is one reason I told you that voter registration is really not an important criteria for me.
Q Yet at the same time, it is a criteria for you; correct?
A Sure. Sure.
Q Is that because not withstanding the ticket splitting and so forth, that at some point voter registration can become so lopsided that you would conclude in your field that

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a particular districts was unwinnable for the opposite party?
A Certainly. We do have a few of those districts in Pennsylvania. I think one of the problems with the map is that they have put so many Democrats in a few districts where

those districts are unwinnable for Republicans.
Q Now isn't there also an issue of geography? Where are most of the Democrats in Pennsylvania concentrated?
A They are in Philadelphia. They are in western Pennsylvania. They are also in some of the urban areas.
Q All right. In western Pennsylvania, is it fair to say that the highest concentration of Democrats is in Pittsburgh?
A The largest number? I believe that the outlying counties have more Democrats than the City of Pittsburgh.
Q In terms of the percentage of registered voters that are Democrats, is the highest percentage in the city?
MR. SPIVA: Objection, vague. Percentage of what?
BY MR. KRILL:
Q Democrats, voters.
JUDGE NYGAARD: Go ahead.
A Mr. Krill, I am not sure. I would have to speculate. For instance, I am from Washington County, and I know that we have a very high percentage of Democrats there. So I would have -- I can guess if you want me to guess.
BY MR. KRILL:

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Q If you don't know, just say so, Mr. Ceisler.
A I can only speculate.
Q Can you compare the number -- either the number or the percentage of registered Democrats to registered Republicans in Allegheny County?
A It is a majority Democratic county.
Q Can you give us any figures on that?
A I would have to look at the data for that.
Q You also listed voter performance as one of the things you look at?

A That is an element also, yes.
Q How do you look at voter performance?
A It is a percentage that is calculated from statewide races over a number of years and gives you -- it gives you sort of a look at how Democrats will do in that district.
Q Right now, how many statewide officerholders in Pennsylvania are Democrats?
A Well, the Governor is a Republican. The State Treasurer is a Republican. The Attorney General is a Republican. Our two Senators are Republican. So that would leave the Auditor General.
Q There is only one?
A Bob Casey.
Q And how many Houses of the General Assembly do Democrats control in Pennsylvania?

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A The Republicans control both chambers.
Q So the Republicans control both chambers of the General Assembly, the governorship and all row offices except one; is that right, and both U.S. Senate seats?
A That's correct. And that is why they can draw a map like they did.
Q And the Republicans also have most recently since the year 2000 elections a majority of the Congressional delegation; is that right?
A Eleven to ten Republican, correct.
Q Isn't it fair to say Pennsylvania looks like a pretty Republican state?
A Not necessarily because things change. I think we are going to elect a Democratic Governor.
Q Now you said that you also looked at the candidates. What does that involve?

A Just how the candidates fit the district, what their personal skills are, whether they are good campaigners, how long they have lived in the area, what their ties are, how they come across in person, how they come across on television.
Q Why does that matter?
A I think when people vote, they want to have an visceral connection to the candidate, and they want him or her to be likeable, and they want to be able to relate to them.

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Ceisler - Cross

Q So the quality of the candidate -- let's say is the charisma of the candidate is something that you consider important?
A Charisma, we don't have too many with charisma in Pennsylvania. The personal qualities, Mr. Krill, that come across to people. I mean honesty, integrity, warmth, things like that.
Q What happens if you have a candidate who connects with people because the candidate has those qualities running against a candidate who lacks those qualities?
A Well, that could be an element in that person winning. Again, it is all part of a package. Everything has to go right.
Q Can you assign a percentage to that quality of candidate personalities and say that represents such a percent of the whole election outcome?
A I don't think so.
Q You also talked about money being a factor that you look at?
A Unfortunately so, money is a factor.
Q So you would look at which candidate either has more money or can raise more money; is that right?

A That would be very important because that is how they get their message across.
Q Now that is my list of what I believe you testified to

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Ceisler - Cross

yesterday as the components that you look at for trying to forecast elections.
Did I get everything you said yesterday?
A I believe you did. I trust you.
Q Now in your testimony at your Daubert hearing, do you recall also being asked by your counsel what factors you look at?
A I don't specifically recall.
Q You do recall testifying at your Daubert hearing?
A Yes, sir.
Q Mr. Ceisler, I am going to read a colloquy from page 149 of your Daubert hearing.
MR. SPIVA: I object, Your Honor. This is not proper impeachment. He hasn't made the kind of statement that could be impeached.
JUDGE NYGAARD: Overruled. Go ahead.
MR. KRILL: He has.
BY MR. KRILL:
Q Question by your counsel Mr. Spiva --
MR. SPIVA: Could we have a page?
MR. KRILL: Page 149. I think I said that.
BY MR. KRILL:
Q I would be happy to give the witness a copy to follow.
A Thank you.
Q Line 22 on page 149, do you see that, Mr. Ceisler?

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Ceisler - Cross

A Yes.
Q You are asked by Mr. Spiva: Okay, and what types of methods do you use or information do you look at in trying to accomplish that objective? And was that objective basically trying to forecast elections?
A No. This was the question because it was about when you are a consultant on campaigns.
Q And you are trying to win; aren't you?
A Yes.
Q You said, well, we look at voter registration. Do you see that?
A Yes.
Q And you look at voter performance?
A Yes.
Q And you look at polling data?
A Yes.
Q On page 150 you say quote we look at the amount of money you can raise and where do you put the money, into what types of media. Do you put it into a field campaign and contact campaign. Do you see that?
A I see it.
Q So you were looking at the types of available media also. Is that something we should ad to your list you testified to yesterday?
A Well, I think you are asking me a couple of different

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Ceisler - Cross

questions. I am not sure. I thought you were asking me in terms of not so much running a campaign, but analyzing a campaign.
If I am asked to analyze a campaign for television

or whatever, where you put media is - that is not my decision. You can look at it. But sure, if you want to put it on the list, you can put it on the list.
Q When you are running a campaign, you are trying to win. When you are analyzing a campaign from the outside looking in, you're trying to figure out who is going to win; right?
A Yes.
Q And so you would look at some of the factors; wouldn't you?
A Yes.
Q Now do you see on line six of page 150 of your testimony you said you're looking at what your free media message is. Would you also add that to your list of yesterday's factors?
A I think that comes under issues, Mr. Krill, but you can -- we can have some subheadings here. But put it on the list.
Q Okay. And you said you're -- quote -- you're looking at the type of issues you want to emphasize, where you want to emphasize. You might want to talk about one thing in one

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part of the district. You might want to talk about another or emphasize another issue in another part of the district.
Is it fair to say that that is a subset of issues?
A Yes.
Q And why would you emphasize one issue in one part of the district and another in another part of the district?
A Because people in one part of the district might care about a certain issue. They might care about a road project or some type of environmental concern where people on the other part of the district don't even know about it, and it

doesn't affect their lives.
Q Is it fair to say that although the specifics on issues might differ, there are some issue themes that a consultant in your role sees emerging over and over again in every campaign?
A I think ever campaign is different, Mr. Krill. But I guess there are some issues that when they are issue difference that emerge. Every campaign is different. Every year is different.
I mean this year because of what happened on September 11th, national security, foreign policy is important. Those issues weren't important before.
Q Now yesterday you testified about some maps. I am showing you Plaintiff Exhibit 2D. Do you recall testifying about that yesterday?

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A Yes, sir.
Q Did you make that map?
A No, sir.
Q There is an area highlighted in green on Exhibit 2D. What did you think that shows?
A In green, that is going to be the new 18th Congressional District.
Q Under Act 1?
A Under Act 1. That is what the heading says so that is what I imagine it is.
Q Okay. And it looks like it travels from Washington County in the west through Allegheny County into what county is this?
A I think it is Westmoreland.
Q You think it is Westmoreland?
A And probably a little Fayette. I am not sure.

Q Starting in the east, do you know what State Senate District or Districts are within the easternmost portion of the 18th Congressional District?
A I know that Senator Kukovich represents parts of Westmoreland County. I don't know the number of the district.
Q Do you know whether any part of his Senate seat is within the 18th Congressional District?
A I believe he represents most of Westmoreland County. I

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can't say for sure, but I believe it would be.
Q Do you know whether there are any other Senate seats -- State Senate seats in Westmoreland County that are all or partially within the 18th Congressional District?
A I am not sure.
Q You said you thought there was part of Fayette County perhaps in the 18th?
A I am not sure. I would have to look at the books and refresh my recollection. But I am sure you can tell me if there is.
Q I am not under oath though, Mr. Ceisler. Let's look here closer to within Allegheny County. Do you know whose State Senate seat is adjacent to the 37th Senate seat in Allegheny County within the 18th Congressional District?
A I am not sure. I am not sure. The only State Senator I know from there is Barry Stout from Washington County.
Q Because that's where you grew up; right?
A Yes.
Q Do you know whether Senator Stout's District is still within the 18th District under Act 1?
A I believe part of it still is.
Q You believe? Are you really sure about that?

A Senator Stout represents South Spring Township where I grew up. That is one of the split municipalities. Part of it is going to be in the new 18th, and part of it is in the

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Murtha District. So I believe that Senator Stout does represent part of that.
Q Now yesterday, it was very easy for you to recognize that the 37 State Senate District was within the 18th Congressional District by looking at Act 2 -- by looking at excuse me, not Act 2, Exhibit 2D; wasn't it?
A Yes.
Q Why was it so easy to recognize?
A It is in brown.
Q And isn't there another reason why it was easy to recognize?
JUDGE NYGAARD: I recognize it from here. Where are you headed for? We have looked at that map. It is right there in front of us.
BY MR. KRILL:
Q It is labeled; isn't it?
THE COURT: Certainly, it is.
BY MR. KRILL:
Q The districts that you can't recognize aren't labeled; are they?
A Right.
Q Okay.
JUDGE NYGAARD: I hope we are going to learn something pretty soon, Mr. Krill.
MR. KRILL: I think we are, Your Honor.

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JUDGE NYGAARD: Good.
MR. KRILL: I think we already have.
BY MR. KRILL:
Q Now I am showing you Plaintiff Exhibit 2C. You now live in Philadelphia; don't you?
A Yes, sir.
Q All right. Whose State Senate seat is at the northern end of the new 6th Congressional District?
A Well, they have done redistricting -- currently or the new districts?
Q Let's talk about currently.
A Currently, the northern part of that district, I am not sure.
Q Again, it is easy for you to recognize the district that is labeled; right?
A Yes, sir, I can read.
Q You didn't make the exhibit that is marked as 2C; did you?
A No, sir.
Q Let me just go back to 2D.
A That might be Senator O'Pake that might be up there. It is easier when I am looking at a map.
Q Okay. Do you recognize on Exhibit 2D what this squiggly blue line is that is just above the eastern portion of the 18th Congressional District?

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A It is either a border or a river. I am not sure.
Q If I said that it was Kiskiminetas River would that sound right to you?
A No. I wouldn't know.

Q You are not good on rivers in Western Pennsylvania; is that fair to say?
A That is fair to say. I am not a sportsman, Mr. Krill.
Q You are aware, aren't you, Mr. Ceisler, that the rivers in western Pennsylvania have for a long, long time defined the industrial and the political history of western Pennsylvania?
A Yes, sir.
Q Now yesterday you said that you mentioned a Mr. Joe Martz; do you recall that?
A Yes.
Q And do I recall correctly that you said that you expected him to run against Congressman Hoeffel?
A I said there was a possibility of it.
Q Do you know whether that possibility has materialized?
A Well, we will know today.
Q Today is the deadline for filing nominating petitions; isn't it?
A Yes.
Q You talk to people. That is part of your methodology, Mr. Ceisler. Do you know whether Mr. Martz is circulating

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nominating petitions?
A I am told he has circulated, yes.
Q Do you know whether he has decided to file?
A I do not know that.
Q Do you read not only newspapers in newsprint editions but online also?
A Yes, sir.
Q Do you read PhillyNews.com?
A That is The Inquirer Daily News. I get that at home. Sometimes, it is easier to read the newspapers. I will read

it online sometimes.
Q Are you familiar with a reporter named Dave Davies?
A Yes.
Q Do you recall seeing a March fifth article in the Philadelphia Daily News reporting Mr. Borski's announcement that he won't run in the new district?
A I know that Borski announced that. I don't know if I read the article or not.
Q Do you read the Allentown Morning Call?
A That's a very good paper.
Q I take it you read it?
A I try to read it, yes.
Q Do you know Frank Devon of The Morning Call?
A No.
Q Do you know who the Montgomery County Democratic Party

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Chairman is?
A Marcelle Groen.
Q That is G-r o-e-n?
A Yes, sir.
Q Do you recall reading a statement in either the Morning Call or another newspaper by Mr. Groen saying that Mr. Borski's decision not to challenge Mr. Hoeffel was a major blow to the goals of GOP redistricting?
A That is probably something that Mr. Groen might say. Because behind the scenes they are hoping that the northeast Philadelphia Democrat won't run.
Q The Democrats are you say?
A The Democrats who support Mr. Hoeffel are hoping that. Because, remember, this was all set up for Mr. Borski or the northeast Democrat from Philadelphia to win and then lose in the general election. So when Mr. Groen says that, that is

what he is addressing.
MR. KRILL: I move to strike that reference to all set up, Your Honor. I think the witness --
THE COURT: Denied. Let's move on here.

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BY MR. KRILL:
Q Isn't it true that Mr. Hoeffel and the Montgomery County Democrats believe that Mr. Hoeffel has an excellent chance to win now that Mr. Borski has dropped out?
A If Mr. Hoeffel is the nominee. As I testified yesterday, I believe he has a 50/50 or better than 50/50 chance of winning.
Q That is not what I asked you. I asked you is it true that Mr. Hoeffel and the Democrats in Montgomery County think he has an excellent chance to win?
A If he is ~~a nominee~~, Mr. Krill.
Q Is that what they believe, if he is a nominee, he has an excellent chance to win?
A Yes.
Q Thank you. Yesterday you referred to letters of endorsement for Melissa Brown. Have you seen any of those letters of endorsement?
A Yes, I saw them. I think I saw them online actually.
Q The actual signed letters?
A The copies. Copies of the letters, yes.
Q Where did you see that online?
A I think that was on the Politics PA website.

Q Are you sure you saw actual letters and not just reports about letters?
A I remember seeing I think one. I think I remember

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seeing specifically a letter from Curt Weldon, but I don't remember all the letters. But I also remember reading a report about it also.
Q Now you haven't done any polling to prepare for the opinions that you have rendered in court in this hearing; have you?
A No, sir; I have not.
Q You haven't examined any polls to prepare for the hearing -- for the opinions you have rendered in this hearing; have you?
A No, sir; I have not.
Q And you haven't brought into court a file of all the newspapers clips that represent that source of information on which you are relying today; have you?
A No, sir; I have not.
Q You don't keep a diary detailing what individuals say to you; do you?
A No, sir; I don't.
Q You don't actually know how much money any particular Congressman has in their campaign committee bank account right now; do you?
A Today, no, I don't.
Q You don't actually know, do you, how much money any potential challenger to an incumbent may have in their campaign bank account?

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A No, I don't. But at this point, the Senator Murphy and Senator Gerlach, they will have the money they need to run very effective campaigns. Just as we talked about yesterday, the fact that Majority Leader Armey is coming here to campaign for Senator Murphy shows a commitment of the National Republicans to his election.
Q So you are saying that the National Democrats are not committed to any of their Pennsylvania candidates; is that right?
A I didn't say that, Mr. Krill. But National Democrats are not going to put money into elections that are losers.
Q And have you gotten that commitment from the National Democrats?
A I don't talk to them about that. I know how they operate. Just like I don't think if a Republican candidate ran against Congressman Brady that National Republicans would give that candidate any money.
Q So you don't know, do you, Mr. Ceisler, how much money, if any, the National Republican Party has committed to any Democratic candidate in Pennsylvania?
A No. Because right now in some of those races, there aren't even candidates.
Q Is it fair to say that you don't know?
A Right. I do not know.
Q In the process of talking to people, Mr. Ceisler, have

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Ceisler - Cross

you heard that Senator Harris Wofford's son is considering running against Senator Gerlach in the 16th Congressional District?
A Yes, I have.

Q And the Wofford name is very well known; isn't it?
A Yes. Well, not as well known as it was. It didn't get Senator Wofford elected.
Q It did get him elected once; didn't it?
A Yes, on issues. On issues, it did.
Q And by the way, when you went through your methodology, you didn't list name recognition as a factor. But that is in fact an important factor in an election campaign; isn't it?
A Sure. I think I talked about name recognition yesterday in terms of incumbents, incumbents staying in office. Sure, it is.
JUDGE NYGAARD: Are you through?
MR. KRILL: I have one more question.
BY MR. KRILL:
Q It is fair to say, isn't it, Mr. Ceisler, that Act 1 protects a lot of incumbents of both parties in Congressional Districts?
A It protects all Republican incumbents, but not all Democratic incumbents.
Q It does protect -- you listed five that it protects; didn't you?

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A And two of those I believe have to be protected under law.
Q You are talking about the two minority districts in Philadelphia?
A Yes.
Q So you are talking about Congressman Brady and Congressman Fattah?
A Correct.
Q In the First and Second districts respectively?
A Yes, sir.

MR. KRILL: Thanks. No further questions.
THE COURT: Any redirect?
MR. SPIVA: No redirect, Your Honor.
JUDGE NYGAARD: Questions from the Court?
BY JUDGE YOHN:
Q You talked about the lack of purging in Pennsylvania. What is the law in Pennsylvania on purging at this moment?
A I believe it is after people don't vote after five years.
Q Five years. I know years ago, it used to be two years.
A But I am not -- I am really not sure, but there have been some problems with purging. The counties, they are inconsistent.
Q And you also said there was a problem with registration

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because of the motor voter law. I don't understand that.
A Basically people have to register -- they register to vote when they go to get their driver's license.
Q They can register?
A Yes, and they tend not to vote.
JUDGE YOHN: That is all I have.
JUDGE NYGAARD: Thank you. You may step down.
MR. SMITH: Our final witness is Representative Mascara. He should be here momentarily. He is driving in from Washington County. I wonder if we could have ten minutes or whether we can start Mr. Krill's case.
JUDGE NYGAARD: Let's continue. We will take him out of order. Any objection? Let's move on. We have such a limited time here.
MR. SMITH: The other thing I need to raise is Dr. Lichtman's tables, the exhibit. I moved the admission of

that yesterday. And Mr. Krill asked to cross-examine on it. Then I didn't remove it. I would like to move the admission of Exhibit 12.
MR. KRILL: Objection, Your Honor. Lack of foundation. It is based on flawed unreliable evidence in Exhibit 13. And furthermore, it lacks a valid methodology, lack of relevance.
JUDGE NYGAARD: No. It will be admitted. Your argument goes to weight. We can consider that. It is

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admitted.
(Plaintiffs Exhibit 12 was admitted into evidence.)
MR. SMITH: With the exception of Congressman Mascara, that is the final bit of evidence that we will introduce today.
JUDGE NYGAARD: Very well. Mr. Krill?
MR. KRILL: Your Honor, in light of the schedule that you announced I have given some thought with my colleagues here about how to save some time. We have a number of exhibits that are --
JUDGE NYGAARD: Is this our witness?
MR. KRILL: Yes, it is.
THE COURT: Okay. Tell him he is on.
MR. MASCARA: I am on.
MR. SMITH: We call Congressman Mascara.
MR. MASCARA: There was an accident on the Turnpike.

FRANK MASCARA, called as a witness, being duly sworn, testified as follows:

THE CLERK: Would you state your name, please?
A Frank Mascara.
MR. MACH: Daniel Mach for the plaintiffs, Your

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Mascara - Direct Honor.

Honor.

DIRECT EXAMINATION

BY MR. MACH:

Q Congressman Mascara, what district have you represented under the 1992 Congressional map in Pennsylvania?

A The 20th Congressional District.

Q How long have you represented that district?

A This is my eighth year.

Q Prior to becoming a Congressman, did you have any political experience in that part of the state?

A I was the County Controller in Washington County for six years and a County Commissioner in Washington County for fifteen years.

Q I am showing you what has been marked as Exhibit 1. Can you please describe geographically the 20th District?

A All of Washington County, all of Greene County, about 80 percent of Fayette County, and approximately a 110,000 constituents in Westmoreland County and Allegheny County.

Q Congressman Mascara, can you please describe the people and communities that reside in the 20th District?

A It is my understanding that the Washington, Greene Fayette Counties have been a part of the districts for nearly a hundred years. Most of Washington, Greene, Fayette and parts of Westmoreland Counties are primarily agriculture, a lot of farming, a rural area of my Congressional District.

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Mascara - Direct

There are a lot of elderly. Of course since the demise of steel in the 1980's, we really never recovered from those recessions of the 1980's. But the concerns there are deep rooted in what are we going to do with prescription drugs, what is the future of Medicare.

In fact, I think we rank second per capita to Dade County in Florida with elderly in my Congressional District.

Q Congressman Mascara, have you reviewed the Congressional map recently passed by the General Assembly, what we have been calling Act 1?

A The Conference Committee, yes.

Q What does that map do to your existing district? And I have left up another map that has been marked as Exhibit 2B there. If you can't see it, I can put it up on the easel.

MR. SMITH: Let me just hold it up.

A Yes. This is the infamous William DeWeese sea lion, the new 12th District as it has been called. But it completely emasculates the 20th District.

There is a great deal of concern by the voters of both the 12th and the 18th. The 18th, of course, was designed --

MR. KRILL: Objection, Your Honor. Move to strike.

THE COURT: Just respond to the que tion if you would, Congressman.

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Mascara - Direct

A I am trying to show the difference between the new conference map and Act 1 and what the 20th is all about.

JUDGE NYGAARD: Onto the next question if you would, please.

A I can't do that unless I describe in detail the new 12 district which originally --

JUDGE NYGAARD: Wait a minute. What was your question? Restate your question, and let's zero back in on what you were asking.

BY MR. MACH:

Q Let me ask you: Can you describe geographically what the new district looks like?

A It runs from the West Virginia border on the west and the south approximately 150 miles north to Cambria County and contains different -- parts of that district which was I would have to say split.

And if I might say that the original map that came out of the Senate had Representative Murtha and myself in that district. I was subsequently removed when the Conference Committee and they went down the middle of my street, removed me from the 12th and put me in the 18th, I think that pretty much describes it.

Do you want to talk about splits? Am I permitted?

THE COURT: Just respond to the question. Perhaps

they will get around to it.

BY MR. MACH:

Q You described how the district as drawn under Act 1 includes your house. Can you indicate on the map how where you live is connected to the rest of the district?

A It's Washington County along the Monongahela River. I live in Charleroi, Pennsylvania. And they were successfully came over into Charleroi along the Monongahela River and took out five precincts in order to get to my house.

When they got to my house, I believe it was one

precinct in Allegheny County, two in -- one in Carroll Township, one in Fellowfield Township and several in Charleroi in order to come over the hill to get to my home.

When I leave my home, I am in the 18th. When I walk across the street to get into my car, I am in the 12th Congressional District.

Q You described it earlier --

JUDGE YOHN: Can you point to exactly where your home is?

A I am looking for Charleroi on here. Right here, Your Honor. What they did was come across the river. They had to go across the river from Allegheny River to get to Washington County. By the way the crow flies, it is probably only five miles. If you take an automobile, it would probably be more than five miles.

BY MR. MACH:

Q You referred to an earlier version of a map that included you and Congressman Murtha in the same district. Can you describe that briefly?

A What happened there -- can I see that map? I think it is an Alternative -- the one that goes up into Beaver County and puts Representative Murtha in Fayette County. It gives me all of Washington except Peters Township which is a predominantly Republican District. They took that out of Washington County in order to accommodate a seat that they were attempting to create.

MR. KRILL: Objection, Your Honor. Hearsay. It is imputing intent.

A Your Honor, that is a matter of record.

JUDGE NYGAARD: Overruled.

(Map depicting SB 1200, PN 1612 & Data Summary was

introduced as Defendants Exhibit 8.)
BY MR. MACH:
Q For the record, this is Defendant Exhibit 8. Can you just confirm whether or not this is in fact the map you were talking about?
A Yes.
MR. MACH: I believe the Court has copies of this.
JUDGE NYGAARD: What exhibit?

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MR. MACH: Defendant Exhibit 8.
A This was passed by the Senate.
MR. MACH: I don't believe we have a blow-up of that. It is in the white binder I think.
MR. KRILL: White binder, Volume 1, Your Honor.
BY MR. MACH:
Q Just so the Court understands what you are talking about and based on this map, can you identify if there are any dots or anything?
A This is the original Senate map that was passed before the Christmas break which has three separate districts there -- no, it has me in the 12th District with Representative Murtha. This is before this map.
And Representative Murtha didn't find that satisfactory. He asked that the Senate map be changed to reflect that I would no longer be in the 12th and pitted against him in the 12th Congressional District and placed me across the street in the 18th District.
Q Under Act 1, you do not live in the same district as Congressman Murtha; is that right?
A That's correct.
Q Now you referred to splits earlier. Are there any

municipal splits along the line between the 12th and 18th District?
A Yes, there is. I think there's a total of 69 splits.

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And -- 62. 49 of those splits occurred in the 18th and 12th Districts affecting a total of 282,000 people in order to draw the map that they drew.
Q Do you have an understanding of the political leanings of the areas on either side of the line between Act 1's 12th District and 18th District?
A I certainly do.
Q Can you describe that for the Court briefly?
A The 18th District -- as well as the district out of the east that I can't speak to because I am not as familiar with the east as I am with the west -- the maps were drawn in such a fashion, and it is common knowledge, that those responsible for drawing the map, more specifically a super computer at Carnegie-Mellon, created two Congressional seats for two incumbent Senators in the Pennsylvania Senate, Senator Tim Murphy and Senator Gerlach from eastern Pennsylvania.
Q And can you describe the politics of each of the two Districts, 12th and 18th as they are now under Act 1?
A What happened in the 18th, because I represent a part of Allegheny County now, which historically in the four elections that I ran in that there is a preponderance of Democrats who have a tendency to vote Republican.
And apparently, the computer was able to identify that. Don't ask me now. This is the first time in history I understand that a super computer was used to draw the

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reapportionment map. And what they did was include more of Allegheny County in the 18th District.

I currently represent about 20 percent of Allegheny County in my current district. Now with the new map, there is 55 percent in Allegheny County. And given that, plus the ability of the computer to identify D's that vote R, this seat is a given. I understand there is not anybody even running -- Democrat, that is, -- for that seat.

So they did their homework and was able to crunch the numbers. And so they have a compactness of Democrats in one area and compact of Republicans in another area.

MR. KRILL: Your Honor, I object and move to strike the Congressman's testimony about the super computer. No foundation was laid for his knowledge of such a thing.

JUDGE NYGAJIRD: Overruled.

BY MR. MACH:

Q You testified that this seat is a given for one particular party?

A Yes.

Q Which party?

A The Republican Party.

Q Do you recognize this as that district?

A Yes.

Q Do you know what this brown area I am referring to is on Exhibit 2D?

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A Is that in the Allegheny County? Is that Melissa Hart's? If I could see the other map.

JUDGE NYGAARD: Why doesn't somebody give him a hand with the maps? Mr. Spiva?

MR. MACH: This is a blow-up of this area. And for the record, this is a map that is labeled Murphy 37th Senate District in the 18 Congressional?

A Okay. I recognize this, and I can point it out on there. You were asking about the --

BY MR. MACH:

Q Can you describe how this seat is a given? You said it is a given for the Republicans?

A I would rather do it on here.

Q Sure.

A Basically what they did is they took the worst of my existing district which has tendencies to vote -- maybe I can use this marker here. They took the parts of Washington County that have a tendency to vote Republican and where the Democrats have a proclivity to vote Republican and came into Westmoreland County and did the same thing.

So there's pieces of areas that people tend to vote Republican. And they successfully were able to identify that. Which made it a strong part of Allegheny County, Upper St. Claire and Bethel Park.

MR. KRILL: Objection, Your Honor. I move to

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strike again. The witness again is imputing without a foundation. It is hearsay. He was asked to describe his district, not to describe what people -- what he thinks people intended to do.

JUDGE NYGAARD: I am not going to strike. Let's get back to the question and answer. It is a little different from Congress the way we work here.

A I understand that, Your Honor.

JUDGE NYGAARD: We ask a little restraint on your part?

A You will have to bear with me. I am not a witness everyday in Federal Court. Thank God.
BY MR. MACH:
Q If Act 1 remains the law and remains the map in Pennsylvania, are you going to run in the district in which you reside?
A No.
Q Can you explain why?
A Because the map that was drawn takes the worst of what I had and gives it to Tim Murphy, and takes the best of what I have in my current district and puts it is in the 12th. Fifty-two percent of the Democrats in the new 12th District, they vote for me. I had to make that decision.
I looked at the numbers both in the 18th and the 12th, and it was better for me to run in the 12th.

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Mascara - Cross

MR. MACH: I have nothing further.
JUDGE NYGAARD: Very well. You may examine.
MR. KRILL: Thank you.

CROSS EXAMINATION

BY MR. KRILL:
Q Congressman, would you turn again to Defendant Exhibit 8? Do you still have that in front of you?
JUDGE NYGAARD: Give him a hand there, counselor. It is in the book.
MR. KRILL: For the Court's information, Defendants Exhibit 8 has two pages. The first page is a table. The second page is a map. I am asking the Congressman to look at the second page, the map.
BY MR. KRILL:
Q If you look at Defendant Exhibit 8, do you see a number of black dots on the map?

A Yes.
Q Those represent the residences of incumbent Congressmen; don't they?
A I don't know. If you say so.
Q Let's look --
JUDGE NYGAARD: When you are asked a question and you don't know the answer, that is an acceptable answer I don't know.
A I don't know.

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JUDGE NYGAARD: Okay.
BY MR. KRILL:
Q Let's look a little more closely at the 12th Congressional District. If you proceed from the foot of Allegheny County and follow the Monongahela River line which you can see on the map -- don't you?
A I see the Monongahela River.
Q Shortly -- just a little bit below the first squiggle of the Monongahela, you see a black dot. It is superimposed almost on the river. Do you see that?
A Yes.
Q Is that approximately where you live?
A Yes. If that is Charleroi, Pennsylvania, that's where I live.
Q And in the 12th Congressional District to the east, do you see a county that is mostly gray representing the 12th District?
A Yes.
Q And do you see a black dot in the southwest corner of that county?
A I think it is a black dot. I am not sure.
Q If that black dot thing that you are looking at is a

23 black dot, is that in a location that approximates the
24 residence of Congressman Murtha?
25 A Congressman Murtha is from Cambria County which is to

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Mascara - Cross

1 the northeast. I see a black dot up there. That looks like
2 Johnstown. It looks like a metropolitan area.
3 Q You do see a black dot there?
4 A Yes.
5 JUDGE RAMBO: Why don't you point to it?
6 JUDGE YOHN: He is talking about the one to the
7 lower left of the number twelve.
8 BY MR. KRILL:
9 Q That dot would approximate Congressman Murtha's
10 residence?
11 A I don't know where John lives really. I think he lives
12 in Johnstown. That looks like a metropolitan area.
13 Q Of Johnstown?
14 A Yes.
15 Q Thank you. Congressman Mascara, you conveyed your
16 views on Congressional redistricting to the General Assembly
17 of the Commonwealth; didn't you?
18 A In writing. The dog and pony show, I didn't attend
19 that.
20 (Letter from Congressman Mascara to Senator
21 Lemmond and Representative Clymer was introduced as
22 Defendants Exhibit 77.)
23 BY MR. KRILL:
24 Q I am handing you a document that has been marked as
25 Defendant Exhibit 77.

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1 MR. KRILL: Binder four, Your Honor.
2 JUDGE NYGAARD: Where are we?
3 MR. KRILL: Binder four, Exhibit 77.
4 JUDGE NYGAARD: Binder four, exhibit?
5 MR. KRILL: 77, Your Honor.
6 JUDGE NYGAARD: 77, very well.
7 BY MR. KRILL:
8 Q Can you identify Exhibit 77?
9 A Yes.
10 Q What is it?
11 A It is a letter sent to Senator Lemmond and
12 Representative Clymer as a result of hearings that they held
13 throughout the state I understand.
14 Q Did you send this letter?
15 A Yes.
16 Q This letter conveys your views on Congressional
17 redistricting?
18 A For the most part it does, yes.
19 Q Did you have an opportunity to actually testify before
20 their -
21 A I did not.
22 Q -- panel? Was that because you were unavailable?
23 A I think it was.
24 Q A scheduling conflict?
25 A Yes.

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Mascara - Cross

1 Q Were you invited to come testify?
2 A I don't believe so. I don't believe I was personally
3 asked to testify.
4 Q At least one of your colleagues did testify though to

your knowledge?
A No.
Q No?
A Commissioners from I believe Washington and Greene County, the Chairman of the Board of Greene County and Washington County appeared before that Commission or whatever you call it.
Q In the process of Congressional redistricting as the General Assembly started to consider it, did you attempt to make a telephone call to any state legislators?
A I believe after the Senate passed the bill and the House passed the bill, I made several calls to some members -- Democratic members of the House that that was something that I could possibly support. Maybe four or five members. I don't recall how many. Certainly Bill DeWeese, our Minority Leader in the Pennsylvania House.
Q Did you talk to some of the Democratic members of the Assembly who are from your area?
A Yes.
Q Who were they?
A Leo Trich I believe, Vic Lescovitz, Pete Daley, of

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Mascara - Cross

course, Bill DeWeese. A few of members that I called that were from Washington County for the most part with the exception of Bill DeWeese, who represents part of Washington County.
Q Did you talk to Congressman Murtha about redistricting?
A Congressman Murtha really, before he got what he wanted, led the fight for a map that would protect as many incumbent Democrat members. He and Mike Doyle and Bob Brady from Philadelphia really led the charge in trying to create a map that would be acceptable to the General Assembly.

However, when it was apparent that they, along with Congressman Kanjorski I guess out of self-preservation, I don't know, they immediately dropped the ball and handed it off to Congressman Borski who then was responsible for pursuing a map that we thought would be acceptable to the General Assembly.
Q So you are saying that Congressman Murtha got what he wanted in the 12th District under Act 1; correct?
A Yes. But Senator Bob Mellow said it first. And Representative Perzel said it also. So I am repeating what I have heard and what I have read in the newspapers.
And they were quite surprised that he settled for so little. That was to get rid of me.
Q Are you saying that Congressman Murtha wanted to get rid of you?

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Mascara - Cross

A Yes. He would approve the Conference Map Act 1 if I was removed from the 12th Congressional District and put in the 18th.
Q As a matter of law in Pennsylvania, any Congress -- any candidate is free to run for any seat no matter where they reside; correct?
A That's correct. I don't know whether he knew that or not, but he knows it now.
Q And are you filing your nomination petition today for the 12th Congressional District?
A I have filed.
Q That is for the 12th?
A Yes.
Q So as of today, the 18th Congressional District under Act 1 is technically an open seat?
A I understand that. I am not sure. I guess today is

the last day to file. So some people could file. I just would like the Court to know, and I would like you to know, sir, that this is not about Frank Mascara. I am not here because of myself.

I am here because the people of my district and the people of Pennsylvania have been wronged. I call it political carnage is what I call it.

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Mascara - Cross

We talked earlier in other courtroom settings about the impact on Pennsylvania by the loss of Bob Borski, by the loss of Tim Holden, by the loss of Bill Coyne, by the loss of Frank Mascara. And ultimately, most of those will not be around after this primary election.

Q Let me just raise one point there. With respect to Congressman Coyne, you are aware, aren't you, that he announced his intention to retire from Congress last year?

A Because he knew he was being pitted against Mike Doyle. Mike Doyle made it known that he was going to run regardless of who he was pitted against. Representative Coyne, a good member of Congress, decided he just was not apparently up to a huge fight in the City of Pittsburgh, which is predominantly Democrats.

So that is the reason I think -- Bill Coyne told me that. I asked him why you decided not to run.

Q Is it true that Congressman Coyne made his decision to retire before any of these maps were created?

A I am not certain about that. I knew he knew, and we all knew, he was in for a fight with Mike Doyle. We share information on the House floor.

I think Bill Coyne had he not been pitted against

Mike Doyle might stay a term or two. I don't know. You would have to ask him that.

Q Is it true that he made his decision last summer?

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Mascara - Cross

A I don't believe so. I don't think it was that long ago.

Q You are aware, aren't you, Congressman Mascara, that 42 Democrats in the State House of Representatives voted for Act 1?

A I sure do. And they voted that way to help Mr. Perzel to pass this bill. And they were called by Congressman Murtha, Congressman Doyle, Congress Brady and Congressman Kanjorski, all of whom liked what they saw on the map.

I knew Perzel could not pass that map without those 42 votes.

Q So in other words, Perzel had to broker a compromise with the House Democrats; is that right?

A Yes.

Q Or otherwise, we wouldn't have a redistricting map at all?

A The Courts then -- if we couldn't reach - I guess that is the way it works. If you don't have a map and time has expired, it goes to the Courts, and the Courts draw a map. They wanted to avoid that.

Q I think the Courts probably wanted to avoid that, too. Congressman, do you believe you can win in the 12th Congressional District?

A Do I have to answer that, Your Honor?

JUDGE NYGAARD: I am curious, too.

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Mascara - Cross

A The polls look good. Again, polls are polls. But they look good. Again, because I said earlier that 52 percent of my current district is in the new 12th. Again, I am not here for Frank Mascara.

BY MR. KRILL:

Q You are not sure here for Mr. Jack Murtha.

A No. I am here because Pennsylvania and my district stands to lose under this reapportionment map, and that is why I am here.

I think I said in an earlier court setting if we could undo that somehow, I would be glad to walk away. I don't need the job. I am here because I like it and I enjoy it. I am hell bent on proceeding to make sure that people in this state are not wronged, and they have proper representation.

The point I would like to make, if I may, talking about representation is that Allegheny County has 10,000 less than two members of Congress. There is 646,000 times -- they have ten thousand less. They are not entitled to any more than two.

If a third is elected -- and I am sure that he is going to be elected -- then you are going to have three urban, suburban members of Congress, and you are going to leave those rural counties under represented as far as I am concerned.

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Mascara - Cross

I think that is an injustice. I don't think it is fair.

JUDGE NYGAARD: All right. Let's get to the next question.

BY MR. KRILL:

Q Let me get into splits. You were asked about splits?

A Yes.

Q Let's start at the bottom. Sort of the lowest level of split you can have is a precinct split; right?

A They have split precincts, yes.

Q You served as County Commissioner?

A Yes.

Q Is there anything wrong with splitting?

A Absolutely, as the Chairman of the Board of Westmoreland Commissioners, I oversaw the Elections office. I believe the Director of Elections testified before the Commonwealth Court.

And let me tell you this: It is a mess. People don't know where to vote. They don't know what precinct to vote in. People across the street are asking me where they go to vote. They used to go to the second, and now they have got to go to the fourth. They have never been to the fourth.

This creates havoc as far as I am concerned. And I am speaking as a former Commissioner that knows about the

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problems associated. People are going to be disenfranchised with this map as far as I am concerned.

Q Because of precinct splits?

A Precinct splits? Street splits. They come down the middle of my street and put this in the 2nd Precinct and put this in the 4th Precinct. The lady across the street votes at a different poll.

I don't think that is fair. I think people are going to be hurt. I think after this election if this doesn't change, we are going to find out that people can't

vote. Many of them can't vote because they don't know where to vote. They don't know who their Congressman is. They don't know Jack Murtha. He is from Johnstown.
Q We are starting at the bottom at the precinct.
A They split communities and split precincts.
Q But are you saying that a precinct split causes ballot confusion or voter confusion?
A If you are elderly -- and I just explained earlier the number of elderly people in my Congressional district -- the lady across the street is 80 years old. She is confused. That whole area is all elderly people.
I am saying it is a disadvantage to these elderly people who should not have their precincts changed all of a sudden. It just happened overnight. I think it is unfair. I really do.

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Mascara - Cross

Q If you go into a precinct that has been split, there would be two polling booths there, right, depending on which part of the precinct you live in?
A It depends on what kind of voting system you have. We have the Florida voting system in Washington County. The punch card system was put in. These people would have to go in and would have to be -- first of all, they couldn't vote at the 2nd. They would have to go to the 4th if you live across the street where I live. It's made a mess of the whole thing.
Q Are you saying that if people go into a precinct where -- their voting place where there is a punch card system, they might end up getting the wrong punch card?
A No. They might not even go. Because if -- they have been going to the 2nd precinct from Charleroi for 20, 30, 40, years. All of a sudden you tell that old person you can't go

there, you have to go to Precinct 4 which is in the bottom of a church, and they say I am not going there.
Q Is it your position that the Commonwealth ought to try to minimize precinct -- the number of precincts that are split?
A It is obvious. I stated earlier about the 18th and the 12th. Out of 62 splits in this area, 47 of them was in the 18th -- 49 in the 18th and the 12th.
Q We are talking about precinct splits. You want to

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minimize precinct splits?
A I think there should be a minimum of precinct splits, of community splits. They took two precincts out of Charleroi to get to me. Now you have three precincts that belong to another Congressman. These people are confused.
MR. KRILL: Thank you very much. I have no further questions, Your Honor.
JUDGE NYGAARD: Any redirect?
MR. MACH: No redirect.
JUDGE NYGAARD: From the Court? Thank you, Congressman. You are free to go.
MR. SMITH: The Plaintiffs rest, Your Honor.
JUDGE NYGAARD: Very well. We were thinking about having a break at ten o'clock. This would be a more appropriate to take a short break. Ten minutes. Let's be back in our seats ready to begin at ten minutes of ten.
MR. KRILL: Your Honor, if I could have five minutes longer, what I would like to do is prepare a list of what I consider the self-authenticating or judicial notice type of exhibits and just ask the Court to admit them at the outset of our case. I think that would save a lot of time.
THE COURT: It might. Let's resume then. Over

the lunch hour perhaps you can get that put together.
Sometime during the course of your presentation, we can do
that.

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, et al.,
Plaintiffs

v. NO: 1:CV-01-2439

THE COMMONWEALTH OF
PENNSYLVANIA,
Defendants

TRANSCRIPT OF PROCEEDINGS
REAPPORTIONMENT NONJURY TRIAL

VOLUME 4
(Pages 1 through 99)

BEFORE: HON. RICHARD L. NYGAARD, Judge
HON. WILLIAM H. YOHN, JR., Judge
HON. SYLVIA H. RAMBO, Judge
DATE: March 12, 2002, afternoon session
PLACE: Courtroom Number Three
Federal Building
Harrisburg, Pennsylvania

COUNSEL PRESENT:
PAUL M. SMITH, Esquire
BRUCE V. SPIVA, Esquire
DANIEL MACH, Esquire
ROBERT B. HOFFMAN, Esquire
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J. BART DELONE, Esquire
For - Defendants Commonwealth of PA, Governor, Secretary and Commissioner Filling

Monica L. Zamiska, RMR
Official Court Reporter

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MR. KRILL: Your Honors, the original of the Exhibit 89 appears to have walked off the table here, so I've retrieved another copy. I intend to use it with my next witness. I call Dr. Thomas Brunell.

THOMAS BRUNELL, called as a witness, being duly sworn or affirmed, testified as follows:

THE CLERK: And would you state your name please.

THE WITNESS: Thomas Brunell.

THE CLERK: And would you spell your last name.

THE WITNESS: B-r-u-n-e-l-l.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. KRILL:

Q How are you employed, Dr. Brunell?

A I'm an assistant professor in the Department of Political Science at the State University of New York at Binghamton.

Q How long have you held that position?

A About three years.

Q What's your educational background?

A I have a bachelor's degree, a master's degree and a Ph.D. all in political science-all from the University of California at Irvine.

MR. KRILL: Your Honor, I'm going to hand the witness Exhibit 48 from binder 3 which is his curriculum

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vitae.

BY MR. KRILL:

Is Exhibit 48 your curriculum vitae, Dr. Brunell?

A Yes, it is.

Q Would it be fair to say that your field of specialty is quantitative political science?

A Yes, that's a general description of what I do.

Q How would you describe it?

A I utilize quantitative statistical methods to study political science, and the substantive areas, if I may go into it, are Congress, congressional elections, electorial systems.

Q Are you a member of any professional associations in your field?

A Yes, I am a member of the American Political Science

Association, the Midwestern Political Science Association, Southern Political Science Association and I think I'm a member of the Western Political Science Association.
Q Have you received any grants or awards in your field?
A Yes, I have.
Q What are they?
A This past semester, fall semester, I was awarded the dean's research semester award which relieved me of my teaching duties to allow me to concentrate on my research for the 1998-'99 academic year. I was awarded the American

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Political Science Association Congressional Fellowship which allowed me to spend a year on Capitol Hill. I also received other smaller grants to travel to meetings and to finish my dissertation. I also -- the Order of Merit Award was for outstanding graduate scholarship while I was a graduate student.
Q Have you published in the field of quantitative political science?
A Yes, I have.
Q And can you identify some of your topics on which you published?
A Some of the topics I published fairly extensively on partisan bias and electorial systems. That would be the most relevant thing or what we're going to talk about here today, but I also published work on a variety of issues, including partisan realignments, interest group scores and how those relate to member ideology. I published extensively on census and some other topics such as the European corps of justice is another interest that I published on.
Q Have you testified as an expert witness in redistricting cases?

A I have.
MR. KRILL: Your Honors, I offer Dr. Brunell as an expert in quantitative political science.
MR. SMITH: No objection.

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MR. KRILL: I move the admission of Exhibit 48, Dr. Burnell's curriculum vitae. I move for 48.
MR. SMITH: No objection.
JUDGE NYGAARD: Admitted, and your motion is granted for treatment for him as an expert.
BY MR. KRILL:
Q Dr. Brunell, what were you asked to take a look at in connection with this case today?
A It was my understanding that I was going - I was going to serve as a --basically as a rebuttal witness to the testimony and reports from the other side.
Q And have you identified --have you examined the data that were -- or data compilations that were provided to defendants by Dr. Lichtman and by his counsel?
A Yes, I have.
Q Have you listened to his testimony yesterday in this court?
A I did.
Q Have you listened to his testimony in the Daubert hearing last week?
A Yes, I was present for that.
Q And you testified at that hearing also, did you not?
A Yes, I did.
Q And did you listen to his deposition testimony earlier?
A Yes, telephonically.

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Q Now I call your attention to Plaintiff's Exhibit 12, which is in the plaintiff's binder of exhibits. Now you heard Dr. Lichtman testify as to his conclusions yesterday, didn't you?
A I did.
Q With respect to his conclusions as they are reflected in the Plaintiff's Exhibit 12, Table 1, do you agree with his conclusions?
A No, not at all.
Q Why not?
A Can I use the easel? Would that be -- could I step down and --
Q Sure.
A (Witness writing on easel.) Basically what Professor Lichtman has testified to was that the following relationship exists between seats and votes, which is what we are interested in. So the first thing is what's the vote breakdown in Pennsylvania? On his Table 1 you can see that he is at the very last line he said the sum is 50.3 percent. So he testified that the vote is roughly 50/50 between Democrats and Republicans in the State of Pennsylvania. Okay. So it's a virtual dead heat. There is virtually the same number of Democrats as there are Republicans in the state. So that's the vote.
In term: of seats, under Act 1, his model is

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predicting that there will be 14 Republican seats and 5 Democratic seats, a big advantage for the Republicans. So this is 74 percent. The Republicans get 74 percent of the seats with 50 percent of the votes. Now if that were true,

he testified that there would be 24 percent partisan bias in favor of the Republican party, which is a significant amount of bias if that were indeed the case. However, this number here (Indicating.) depends entirely on both --
Q Excuse me, the witness was pointing to the 24 percent.
A Yes.
Q Dr. Brunell, I have to state that so that the record is clear.
A Okay, that's fine. I'll try to endeavor to, when I point, to say that I'm pointing to. The 24 percent depends entirely on both of these numbers. If either the 50 percent of the votes or the 74 percent of the seats under Act 1 is wrong, then this number is wrong. Okay. So let me take them -- I believe that they are both wrong. Let me take them in turn.
Do we really believe -- he has some data here to suggest that Democrats and Republicans are equally -- have the equal strength in terms of voting in the State of Pennsylvania. I didn't -- I haven't gathered up any data to bring to you a different number, but let's just take a common sense approach. Which party controls the overwhelming

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majority of the statewide elective offices, which party controls a majority in the state house, which party controls a majority in :he state senate, which party won all seven of the judicial - statewide judicial races in 2001? Right. We all know the answer to all of these questions is the Republican party. So I think to have us believe that Pennsylvania is a dead heat, I think is misguided. I don't think there is any way we can really believe that, and I think it depends on data that he's chosen here that he's drawn that number. So this number I think is wrong.

Q The witness is drawing an "X" through the vote 50 number on the easel.
A Okay. Now let's look at seats. Dr. Lichtman claims that under Act 1 the Republicans will win -- his estimate is that the Republicans will win 14 of the 19 new seats. Now we know he even testified that this wasn't completely accurate. Right. We know we can check for accuracy on the left-hand side of Table 1 to see how well he post-dicted the past decade of congressional elections.
Q Excuse me Dr. Brunell, you used the work post-dicted. What is that?
A How well s he predicting the past, okay. So he predicts that :he Republicans should win 12 of the 21 seats in Congress in the past 10 years. Now we know that's completely wrong. In four of those five elections the

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Republicans only got 10 of the 21 seats, and it wasn't even until the very last election in 2000 that they won 11. So in every year it mispredicts it, and it's always mispredicting it to -- in favor of the Republicans. It's always saying the Republicans are going to get more seats than they actually do. So my point is if his model doesn't predict the past, I have no confidence whatsoever that's it's going to predict the future. This number is wrong.
Q The witness has just crossed out the 74 percent on the easel.
A Now remember if either one of these were wrong, this is wrong. (Indicating.) Since both of them are wrong, I have no confidence :hat that represents the actual reality under Act 1 at all. I don't think that there is any evidence that that's the case.
Um, how can I -- let's resurrect this 24 percent

partisan bias ust briefly to do another check on it. So if this were the case again, the Republicans, when the vote is 50/50, the Democrats should win -- the Democrats should win 5 seats to the Republicans 14. So the Republicans have a 3 to 1 advantage in seats, 75 percent to 25 percent. Overwhelming advantage with just 50 percent of the votes.
We have some data that can speak to whether or not this really happens at all, and again he's -- the claim is that this 24 percent is partisan bias in the electorial system.

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So it should m manifest itself in every single election. You can't just point to one election and say, "Look, this was a disadvantage for the Democrats in this election." This tremendous amount of bias has to manifest itself in every single election that occurs if this is indeed the case.
Okay. So if we look at Defendant's Exhibit 89, we can get an idea if this number comports at all with reality.
Defendant's 89, let's look at the first race, the presidential race, Gore beats Bush by 52 percent to 48 percent. Let me quickly count, because I have forgotten how many districts score, let me count them quickly.
Q I think t's on the record, Dr. Brunell, that Gore won 10.
A Gore won 10, okay. So here's a race that's close to 50/50, Your Honors, 52 percent for the Democrats, 48 percent for Republicans. And if Dr. Lichtman is correct, if his model is correct, then we should expect somewhere around a 3 to 1 advantage for the Republican party if this is true. Does that fit reality at all? No, in fact the Democrats get a majority of hose districts. Okay. So not only is it not a 3 to 1 advantage for the Republicans, but, as it should, Act 1 translates a majority of the votes statewide for Gore

into a majority of these hypothetical congressional districts
statewide. So that I think we can again, I won't bother to
get up and cross it off, but I will cross off the 24 percent

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again. I just I don't see any evidence that there is that
kind of partisan bias in Act 1.
Q So is it your opinion, Dr. Brunell, that if the
analysis doesn't accurately post-dict results, then the same
analysis using the same data can't accurately predict it?
MR. SMITH: Objection, Your Honor.
JUDGE NYGAARD: No, let him answer. Overruled.
A Yes, I think I said actually that without even a
question, it may not have been leading, I think I actually
said that.
BY MR. KRILL:
Q Yes, you did. Dr. Brunell, have you looked at Dr.
Lichtman's data compilations in his Exhibit 13 or as they are
reflected in Defendant's Exhibit 89 to see whether Act 1
reflects a majoritarian principle?
A Yes, I have.
Q Can you explain what your analysis was?
A . Certainly This is another approach that I have used
in the past an other experts have used in the past to
utilize statewide data and break it down into these
hypothetical congressional districts to see what the
relationship is between different districting plans. If
indeed Act 1 was severely biased, it would manifest itself in
these hypothetical elections because again partisan bias is
systematic. It is always there. It can't appear and

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reappear. It might differ slightly from election to
election, but Le's claiming that it's biased by a very large
amount, and we should be able to detect that very easily. I
mean, this, again, 50 percent of the vote should translate
into a 3 to 1 advantage in the seats, that should be pretty
easy to detect and in my going through these elections,
let's take a simple test. Does every -- does Act 1 treat
both of the pa:-ties fairly in terms of the majoritarian
principle, which is when you get a majority of the votes
statewide, you should also get a majority of the seats? If
it doesn't, then perhaps it's biased. And Act 1 -- and if we
were to believe Professor Lichtman's testimony that there was
tremendous -- his very significant amount of bias, we should
-- it should "probably violate the majoritarian -- it should
violate the majoritarian principle. Right. I mean he's
saying 50/50, you get 75 to 25.
So as you go through these, and we won't go through
them all because, again, this is something Your Honors can do
later on, but every single one of them complies with the
majoritarian principle, and I submit there is nothing there
that would indicate at all that we'd have the significant 24
percent, a nine seat differential between the parties at
50/50. There s nothing here that would lead you to believe
that. When th Democrats do really well statewide, they do
really well in all the districts.

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We had one of those examples yesterday, but I think
it's really worth going over again, that's the 1992
treasurer's election. The Republican candidate Mr. Knoll
crushes -- the Democrat Mr. Knoll crushes the Republican Mr.

Henry.
Q It's Mrs Knoll.
A I'm sorry. I was just thinking I probably shouldn't go with Mr. And that huge advantage statewide translates into a victory at 18 of the 19 congressional districts as well, which is exactly what you'd expect in a fair electorial system. So when the Democrats do well statewide, they do well in the Congressional districts. There is not 24 percent partisan bias.
Q Dr. Brunell, is it possible to graph that majoritarian principle?
A Yes.
Q Can you do that on the easel?
A Sure.
Q Why don' we flip to another page. Make it as large as you can so that we can all see it please.
A (Witness writing on easel.) I'm a terrible artist, I'll admit that upfront. So this is a graph between votes and seats, and let's say that -- so this is --
Q Just for the record, Dr. Brunell, on the drawing you're making on the easel, the X axis of your graph is what?

A Votes.
Q And the Y axis?
A Is seats. So let's actually make it be more specific. Let's say, let s do this in terms of one party, let's just do Republican sea percentage and Republican vote percentage. Okay. So here it's 0, 0 percent of the vote. Let's call this 50, and let's say out here is 100 on for votes on the X axis. Let's do the same thing for the Y axis, 50 percent and 100 percent. Okay.
So in a single member district winner take all system

like we have America, we'd expect hypothetically to see votes curve to look something like this S-shaped curve, not perfectly straight, not perfectly linear. There is a curving linear relationship between the percentage of the votes and the percentage of the seats.
Q Why is there a curving linear relationship?
A Because we don't have a system of proportional organization. If let's say a party has 50.01 percent of the votes in the state, and let's say there is 19 congressional districts, if their votes were spread efficiently across every constituency, they can pick up every single seat. All you need is -- all you need to do is get a plurality in every single district, and so in order to win a hundred percent of the seats, you need far less than a hundred percent of the votes, and this manifests itself in the electorial college in

1984 when Ronald Reagan beat Walter Mondale. He got about 60 percent of the vote, and I think he won every single state except Minnesota. So he got 95 percent of the electorial college votes. That's the same kind of relationship. Okay.
So you will notice that this line only appears in the upper-right hand quadrant and the lower left-hand quadrant. So if the Republicans were to win 75 percent of the seats with -- let me not -- I won't do numbers. Let's say the Republicans win 45 percent of the vote, which is approximately right here, yet they get 55 percent of the seats --
Q Dr. Brunell, just for illustration purposes, perhaps you can switch to different colors so you don't confuse lines here, and I have one more color for you if you need it.
A Sure. So in this example the Republicans get about 45 percent of the vote and 55 percent of the seats. So the dot

17 would be about right here. (Indicating.) Okay. That would
18 be a violation of the majoritarian principle. The
19 Republicans are able to convert less than the majority of the
20 votes into more than a majority of the seats, and down here,
21 since these are mirrored images of one another, this would
22 just be any dol in this range would be --
23 Q You're referring, Dr. Brunell, to the lower right-hand
24 quadrant of your graph when you say this range?
25 A Yes. Yes, I'm sorry. If there were any dots in this

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1 quadrant, would represent when Republicans got more than 50
2 percent of the vote and less than 50 percent of the seats,
3 which the mere opposite of that means that if the Democrats
4 were able to translate less than the majority of the votes
5 into more than the majority of the seats. So any elections
6 appearing in these two upper left and the lower right-hand
7 quadrant would violate this principle.
8 Q The majoritarian principle?
9 A That's correct.
10 Q Okay. Now when you looked at the way Dr. Lichtman's
11 reaggregation of congressional races turned out under Act 1
12 as shown in Defendant's Exhibit 89, what did you find out
13 with respect t, how they fit on your graph?
14 A All of these races were in either the upper right-hand
15 quadrant or the lower left-hand quadrant, indicating again
16 that Act 1 translates the majority of votes into a majority
17 of seats for both parties, that's the great thing. It
18 doesn't just do it for the Republicans, it doesn't just do it
19 for the Democrats, it does it for both.
20 Q And have you used this kind of majoritarian analysis
21 before?
22 A I have.

23 MR. KRILL: With the Court's permission, I'd like
24 to mark the gr ph as an additional defendant's exhibit.
25 JUDGE NYGAARD: Sure.

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1 MR. KRILL: 101. I'd be happy to mark the preceding
2 sheet, but I don't think that was really necessary. Perhaps
3 I should. Let me -- that would be 101 and 102.
4 For the record, Your Honors, I have marked the
5 first sheet on the easel that Dr. Brunell marked up as
6 Defendant's Exhibit 101 and the second sheet with the
7 majoritarian graph as Defendant's Exhibit 102.
8 BY MR. KRILL:
9 Q Dr. Brunell, with respect to Table 1 of Plaintiff's
10 Exhibit 12 did you have any observations about the weighting
11 that was given by Dr. Lichtman to the election results?
12 A To his Democratic strength?
13 Q Yes.
14 A That. Yes, I -- again I don't -- his decision rule for
15 how he chose which elections, you know, initially he said he
16 chose all elections in even number years, but then it was
17 pointed out that there was one special election in the odd
18 number of years , and now he says that's the one exception.
19 Um, I'm not sure why he didn't include the judicial races off
20 year because, she's testified in previous cases, those
21 types of elect ons can give you an idea for the sort of the
22 base partisanship. The people that aren't really excited
23 about presidential elections or even congressional elections
24 aren't going to turn out, so it might give you -- could bear
25 some weight on this relationship between Democrats and

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Republicans. And so I would -- I think I would quibble with the method that he's chosen to come up with the 50.3. Again I don't think hat's true. I don't think that that 50 represents accurately the strength of the two parties in the State of Pennsylvania.

Q Doctor, call your attention to Table 7 of Plaintiff's Exhibit 12, that's Dr. Lichtman's ranking table. Did you hear him describe that?

A I did.

Q Have you ever seen a table like this described in any of the professional literature or the science?

A I have seen these components, of course, we always talk about the facts, but I have never seen anybody rank things like this and then take an average of the ranks, I have never seen that ever.

Q Is that meaningful output for a table?

A I don't think so.

Q Why not?

A These different components all have meanings of their own. There is no reason to rank them. This is not the Olympics, right. If one bobsled team beats another by .001 seconds in the Olympics, we give one a gold and one a silver, but we don't do that with redistricting plans. If one is ever so slightly more compact than another, then we don't give one the gold and one silver and throw one out because,

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you know, of these ranks. We don't hand out medals. We can just simply look at these numbers. They stand on their own. All right. I think the Court can interpret the difference between 13 municipal splits and 18 municipal splits. There

is no reason to prescribe this artificial rankings and try to make more differences out of the plans than there really is.

Q I call your attention to Plaintiff's Exhibit 12, Table 9. You have heard Dr. Lichtman's testimony about Table 9, didn't you?

A Yes.

Q What observations do you have regarding Table 9?

A Um, I mean, I can -- what this shows is that the voting behavior in precincts is relatively stable over 10 years. So a precinct that voted 75 percent Democrat in one year is probably going to vote around that same amount the next year, and I don't think that's surprising at all. I think it shows the stability. There is a very sharp correlation between years for how precincts vote. So it just demonstrates the stability of voting. And I think that this is -- this is reasonable, and I believe the output in this conclusion.

Q Now I'd like to call your attention to Table 10 --

A Yes.

Q -- of Plaintiff's Exhibit 12. What observations do you have about Table 10?

A So a valid criticism of the work, another valid

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criticism of the work of Dr. Lichtman's was that he didn't use any congressional data at all. I mean, that's really fundamentally that we're interested in here today, congressional elections. So he correctly I believe tried to link the statewide data that he used to congressional data to show that there is a positive. Since we're drawing conclusions about congressional elections, you're going to have to demonstrate that if you use statewide elections, there better be a good relationship between the two. And I think here he shows that there is a strong positive

relationship. A lot of times we heard yesterday that there is just a 1 to 1 relationship between congressional elections and statewide elections, that I disagree with, and the best way to look at this is simply look at these correlation issues. If there truly was a 1 to 1 relationship, then these correlations would be exactly 1.0, the maximum it could be. If it were even .9999, there is no longer a 1 to 1 relationship. They are positively related. It's not a 1 to 1 relationship. They do differ.

Q Now Dr. Lichtman dropped uncontested elections, and the record shows that there were three times as many Republican uncontested elections as there were Democratic. Is there a technique that Dr. Lichtman could have used to avoid let's say dropping disproportionately more Republican votes than Democratic votes?

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A Some analysts instead of throwing out elections that are uncontested will impute election results, and one of the kind of the standard approach is just to impute that the winning party, whichever party that contests it, will impute 75 percent of the vote. If we throw those votes out, then we're losing those data. In reality one of the reasons why it's uncontested is because they come in so strong. So you could impute the 75 percent into those particular cells to kind of impute what might have happened if there were a challenger.

Q Is there any standard technique that persons in your discipline use that incorporates that kind of imputation?

A Yes, and I forgot to mentioned -- well, I haven't mentioned up to this point, I think that the best method to measure partisan bias is -- the most systematic, the most rigorous method available today is a program called Judgeit,

which is one word, J-u-d-g-e-i-t, and this was developed by Professors Gary Kane and Andrew Duncan, and it was developed specifically for the question that we're addressing here today. They were both involved in court cases like this trying to get at the question of partisan bias in electorial systems, and they developed a canned software package to measure partisan bias. And it gives us estimates, like Professor Lichtman did, of 24 percent, but is uses congressional data and it also provides another important

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component which is measure of standard of error, right.

There is an old joke that statistics means never having to say you're certain, right? There are some truths to that, - right? As statisticians, we never say it's going to be exactly 24 percent. We can give you a point estimate of 24 percent, but it's going to be plus or minus, right.

We can't -- whenever there are polls, you always see the plus or minus 3 percent range, the 95 confidence level. Okay, so there is an element of uncertainty, and Judgeit uses that and reports it. It gives us all a better idea of where the real -- where the true partisan bias might really be.

Q Now in statistics, whether or not you're using Judgeit, is it a standard practice in your profession to report the margin of error for any analysis?

A Yes.

Q Did Professor Lichtman do that?

A His method wouldn't allow him to do it, which is one of the major shortcomings. He couldn't. It wasn't a technique that would allow him to derive an estimate with measures of error associated with it. So it's not that he didn't, it's that he couldn't because he didn't use Judgeit, which he should have used, to measure partisan bias.

Q Now I call your attention to Table 11 of Plaintiff's Exhibit 12. What observations do you have about Professor Lichtman's Table 11?

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A This again is related to Table 10. This is where again where he's further drawing this notion. This is really where he draws this notion of a 1 to 1 correspondence, and he repeated that quite often, and again even this table shows that there is not a 1 to 1 correspondence. There is only one year, the final year, that the estimate is 1.0, and, you know, what's the next digit, I'd like to know that? It might be 1.04, in which case again it's not 1.0.

Q Excuse me, when you said what's the next digit, why is that a concern to you?

A Well, you see in some of these he does report two digits after the decimal point and in the others he doesn't. So I think at the very least I'd like to see two digits after the decimal point because that's too close to leave that second digit, that second digit decimal point out.

Q In the field of statistical and political science is it standard practice to use uniform reporting; that is, if you're reporting two digits in one place, that you report two digits always?

A Yeah, I think you usually pick, you know, a reasonable number of digits to report. You just report them all that way.

Q All right. DO you have any other observations about Table 11?

A Yes, again I think I would -- I disagree with the 1 to

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1 correspondence between statewide and congressional elections, and I think again the best way for the Court to interpret that is just to look at Table 10. Those are reasonable correlations of the relationship between the two. It's clearly not 1 to 1, that's obvious. These are regressions, slow coefficients, and Professor Lichtman testified yesterday that every congressional output also has -- there is another element to this, and that's called the constant, right. He talked about Y equals A plus B times X. The A is critical in your regression equation. It's half of the equation.

Q Is the A in the equation the constant?

A That is the constant, yes.

Q Can you explain in layman's terms what the constant is in a regression analysis?

A I'll do my best. The constant would give us an idea about how -- in this particular context it would give us an idea about how congressional and statewide elections differ systematically. Let's say there was 5 percent. That would indicate that the Democrats in statewide offices always do 5 percent better than the Democrats in congressional elections. So it could be -- it could give us more leverage. It would definitely give us more leverage on this notion about the relationship of the congressional and statewide elections, and without it reported here, we don't know what it is. We

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could assume that it's 0, but I'm 99.99 percent sure that it is not 0 in all of these progressions.

Q In your field is it standard practice when doing a regression analysis to report the constant?

A Absolutely.
Q Have you ever seen anyone in your field report a regression without reporting a constant?
A No, not for this kind of relationship that he's trying to show I would have always reported the constant for this.
Q What observation do you have about Table 11 with respect to the confidence level?
A He did provide -- he did provide a statistical significance for slow coefficient, which are these numbers here, (Indicating.) but again he should have reported the constant and its standard error, and he could have also reported for us the standard error for each of these coefficients so we can get an idea about, you know, about the balance of confidence that we have for these estimates.
Another thing is I'm not sure if he weighted this regression or not. I mean, we're starting to get into some detechnical stuff for these kinds of cases, but whenever -- so he used the precinct level data to run this regression. We heard Mr. Novinger John's testimony ear lier that precincts in Pennsylvania go from 0 people to about 6,000 people, so they can vary greatly. Now if there were any

precincts with 0 people in it, Dr. Lichtman wouldn't have included them because there would be no votes. So let's say there are some precincts that have a couple dozen people in them and some would have a couple thousand, when you run this regression, regression will automatically treat each observation completely equally, and I think it's clearly the case that that's not the appropriate method of running regression. Luckily we have come up with ways to weight the regression and you usually weight it by the size of the precinct, the public population, and that can change the

estimates the regression level will give, almost certainly will change the estimates, and I don't know if he weighted them. He didn't say they were weighted by the population, so I can assume that they are not. I will go under that assumption that they are not, and they should have been.
Q All right. Is it standard practice in your field to report a weighting if you have done it?
A Yes.
Q Now yesterday did you hear Dr. Lichtman testify that he had done certain sensitivity analysis?
A Yes, I recall some of that testimony.
Q Do you see sensitivity analysis reported in his Exhibit 12?
A No.
Q In your field would it be standard practice to report

sensitivity analysis if in fact you had done it?
A Yeah, I think if you're going to run some of these checks on the data that bring all of that to bear, you know, improves what you have done, absolutely. So report what you have done so we all can see what, see what the sensitivity analysis tells us.
MR. KRILL: No further questions, Your Honors.
JUDGE NYGAARD: You may examine him.

CROSS EXAMINATION

BY MR. SMITH:
Q Hello, doctor.
A Hello, Mr. Smith.
Q I'd like to start with getting an understanding of what you mean by the term partisan bias. Would you agree that the term partisan bias means that if there is asymmetry in the way that a party's vote share is translated into its seat

share?
A Yes.
Q And so a bias plan is one where one party is able to win a given share of the seats without having to get as many votes as the other party has to get to get the same share of seats. Is that right?
A That's correct.
Q And another way to say it is that if the statewide votes split 50/50 in an unbias plan, each of the two parties

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would get 50 percent of the seats?
A In general. On my graph you could see that the line passes through the point at exactly 50/50. So in every single election you wouldn't expect it to be exactly 50/50, but in general that's the neighborhood that we expect it to be in, yes.
Q And the graph itself it's important that it pass through the litman of 50/50, not to the left or to the right, am I right?
A Right.
Q Because if it were to the left or the right, it would indicate partisan bias?
A If this whole curve were shifted one way or the other, then that would be partisan bias, and that's what Dr. Lichtman testified to, that basically this whole curve was shifted way out to one direction.
Q Right, he testified that they had many more than 50 percent of the seats, the Republicans do, with 50 percent of the vote statewide. Correct?
A Right, he testified with 50 percent of the vote, Republicans get 75 percent of the seats.
Q Now just so we're clear, you have never done any

analysis of any kind to come to an opinion yourself about whether that's true or false, have you?
A I did not run Judgeit to derive estimates of partisan

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bias. I have gone over in front of the courtroom here today just the most simple using Dr. Lichtman's own data and own exhibits, it's clear that his estimate of 24 percent cannot be true. It's clear. It's clear to me.
Q Let's back up and take this one step at a time. First of all, you have never done the kind of analysis which you say is the appropriate kind to decide whether the plan is bias, which is a Judgeit analysis. Is that right?
A I think.
Q Is that right or not?
A I think that Judgeit is the best way to get a partisan bias but I have not --
JUDGE NYGAARD: It would be helpful if you'd answer the question, and then if there is an explanation indicated by the question, you may do so. So do you remember the question?
THE WITNESS: I do.
JUDGE NYGAARD: Very well.
A I have not used Judgeit on Pennsylvania elections.
BY MR. SMITH:
Q And you have therefore not done the methodology which you testify is the best way to decide whether or not there is bias in the congressional method. Is that correct?
A I have not used Judgeit, which is the best method, the most reliable method to get accurate estimates of partisan

Page 32

bias. However, in response to Professor Lichtman's estimate, 24 percent, it's obvious from the data, without even using Judgeit, it's obvious that that can't be true, it's quite clear.
Q Well, it may be clear that the 24 is not the correct number at least in your view. You don't have any idea what the correct number is, do you?
A I don't. I don't have an estimate to provide.
Q You don't know whether there -- so you don't have an opinion whether or not that curve crosses the 50/50 mark or is way to the right of the 50/50 mark, do you?
A I don't.
Q In fact you studiously avoided through two trials coming to any opinion on that subject, have you not?
A No, that's not true.
Q Did you ever suggest that you might want to do an analysis to figure out whether there is bias in the congressional districting there?
A I'm sorry, I didn't hear the first part of your question.
Q Did you ever suggest to counsel that you might want to do an analysis to find out the answer to that question?
A No.
Q Now let me turn to your criticisms of Dr. Lichtman's methodology. I believe the first one that I heard was your

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assertion that Pennsylvania cannot be a 50/50 state, and you base that on a variety of elections that you refer to. First of all, you didn't mention the elections which go the other way such as the last three presidential elections. Is that

right?
A That's correct. I think that -- I mean, I think that's a good example of Democrats doing well statewide, and I think -- I think it has to do with a disjuncture between the national Republican party and the Pennsylvania Republicans. The national Republican party is clearly not the Pennsylvania Republican party, and they nominate people that a lot of Republicans in Pennsylvania don't like, so they are more likely to vote for a Democrat in those elections, but the statewide elections, the congressional elections, the state legislator elections, the Republicans win them all. I mean, they have the majority to all of these elections.
Q Dr. Brunell, one thing you also didn't mention is that the Democrats in almost every year get more votes for Congress in Pennsylvania than the Republicans. Isn't that right?
A That they get more votes total?
Q Yes.
A I don't know if that's true or not.
Q You didn't look at that?
A I didn't.

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Q Now, in any event, the bottom line is that whether or not this is a 50/50 state, Dr. Lichtman's analysis was using the statewide elections merely as a litmus test to try to ascertain whether Republicans and Democrats are fairly distributed among the new districts. Is that correct?
A I think he's trying to derive an estimate of the vote percentage statewide, a generalizable number for how the vote breaks down statewide, and he says that it's 50/50. I don't think that's true.
Q What he was using that vote for was to plug it into the

districts to see whether or not there were many more districts in which Republicans with 50 percent of the votes statewide have a majority than there are districts in which Democrats have a vote, a majority, in the district. Isn't that correct?

A He used it for exactly how he did it on the first sheet of paper.

Q I'm merely asking you to confirm with me that that is what he did. He was using the 50 percent statewide election average to ascertain whether or not Republicans carry many more districts then the Democrats with half the vote. Isn't that right?

A That's not entirely correct.

Q Well, in what way is it not correct?

A He was also using it to -- he wants to understand the

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relationship -- we all want to understand the relationship between seats and votes. He used this average over I believe 19 elections, is that correct, 19 statewide elections?

Q Yes, that's right.

A To derive estimates both statewide and for the individual congressional districts, to get estimates for both how these districts would break out individually but also overall. And again we know that some of those predictions using that method were wrong.

Q We also know that when the Republicans got half the votes on average averaging those 19 districts -- those 19 elections together, they didn't carry 14 of the 19 new congressional districts. That's a fact that's true, is it not?

A That's not a fact, but the method is incorrect, Mr. Smith. What he did did produce that output, but it was

wrong, and we know that by looking to see how it predicted past elections. It's wrong. Professor Lichtman admitted it's wrong. It's clear on the basis of the tables i. does not predict accurately all of the elections.

Q And you're saying it's wrong because there are some districts in which the Republicans get a majority of vote in the statewides but the Democrat was able to carry the congressional seat?

A No, I'm saying that sometimes it predicts that the

Page 36

Republicans win a district when actually a Democrat wins the district.

Q And Judgeit does precisely the same thing. Sometimes it predicts a Republican will win a district when a Democrat wins a district. Isn't that correct?

A Judgeit gives much better estimates, and it also has another component that tempers the estimates or --

JUDGE NYGAARD: Give us your answer first and then explain.

A Okay, I'm sorry, Mr. Smith.

BY MR. SMITH:

Q Is it true that Judgeit sometimes predicts that one party will win a district and the other party wins the district?

A There is no method of accurately predicting every single congressional election. However, what Judgeit does, one of the best aspects of Judgeit, is that it uses this notion of statistics, distributions of data, confidence intervals to replicate what happens in congressional elections over and over and over again. So we're not basing it just on a small set of data. It tries to get a much more general idea about what happens by replicating the data over

and over again. So instead of making one prediction that the Democratic will win 52 percent of the vote, rather it will define distribution for that seat and say the point estimate

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is 52 percent, but we also know that we're going to be off by a couple percentage points. So now let's take random drawings from that distribution, and we'll do it over and over and over again to get a better idea about how -- what the true partisan bias is in that systems. That's why, that's one of the main reasons why, you have to use Judgeit.

Q Which you didn't do. Now do you recall Dr. Lichtman's testimony about the mechanisms by which a plan becomes bias, which is to say that the disfavored party has the voters packed into a small number of districts or spread out in the minority status in the rest of the districts? Do you recall that testimony?

A I do recall that.

Q Do you have any opinion yourself about whether that exists in the congressional district that is currently under consideration?

A I didn't look at that.

Q You don't believe that looking at the results that Dr. Lichtman reported that one can draw the conclusion that the Democrats are packed into about five districts and fractured into the rest?

A Again I didn't look at that, Mr. Smith.

Q So you don't have an opinion even looking at his results whether or not he validly drew that conclusion?

A Regardless of the conclusions that he drew, I'm here to

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testify that based upon that part he testified that there is a 24 percent bias.

Q I'm not asking you about that. I'm asking you whether you have an opinion based upon the results that he reported that Republicans or Democrats are packed and fractured in these 19 congressional districts?

A I disagree with his estimate of partisan bias. I don't have any opinion about that. I disagree with -- if that is true, that will bear itself out in partisan bias, and I disagree with his estimates wholeheartedly for what the partisan bias really is.

Q Quantity?

A Yes.

Q But you don't know what the quantity really is?

A I don't. I know there is absolutely no way that it's 24 percent in favor of the Democrats.

Q But the bottom line is you're not disputing the conclusion that Democrats are packed in five districts and fractured in 14 districts?

A I didn't look at that, Mr. Smith. Again based upon the majoritarian principle alone, it treats both parties equally.

Q Now that we're -- what you mean by treating it equally is that in those 19 elections Democrats statewide won the election, then the Democrats carried the majority of the districts?

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A That's correct.

Q Now is that the same thing as saying there was symmetry in those elections, that the Democrats and the Republicans got a symmetrical amount of seats when they got a symmetrical

amount of votes?
A Not necessarily.
Q Did you study that question?
A No, because you would use Judgeit to do that.
Q It is also your definition of partisan bias to study that question. Isn't that right? You said the very first question I asked you is that partisan bias is an asymmetry in the translation of votes into seats.
A That's still correct, Mr. Smith.
Q And your discussion of the majoritarian principle in these 19 elections did not address that issue, did it?
A It does address it in part.
Q But it didn't address it to the point that you come to a conclusion that there is symmetry between the parties?
A That's correct. I think that there should have been a Judgeit analysis run to show what the true partisan bias is. I'm just responding to what Dr. Lichtman has done.
Q Now I have prepared a demonstrative exhibit of our own, Dr. Brunell, which I have marked as Plaintiff's Exhibit 22. This, Dr. Brunell, is just taken straight from Defendant's Exhibit 89. It just reports the election, the nine

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elections -- nine of the elections that were reported in Defendant's Exhibit 89, and what this shows is that the Republicans won elections with 51 percent of the vote six times, and in those six elections they got either 13 or 14 districts, and the Democrats got either five or six districts. And it goes on to look at four elections where the Democrats won with between 52 and 56 percent of the vote, and in those elections the Democrats carried either 10 or 11 seats. Do you see that?
A I do.

Q And do you have any reason to dispute these figures?
A I don't.
Q And if these figures are correct, does this not establish that there is a gross asymmetry between the ability of the Republicans and the Democrats --
A Not necessarily.
Q Excuse me, I'm still speaking.
A I'm sorry.
Q -- to translate votes into seats as demonstrated by these elections?
A Not necessarily. Again you can point to some certain elections, and again, I mean, I think that this is a perfect exhibit, Mr. Smith, to say that Dr. Lichtman's analysis is completely wrong. At 50/50 we expect 3 to 1 in favor of the Republicans. Show me any of these elections where we have

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this nine seat differential.
Q Excuse me, these are 51 percent elections, and in three of them they do win almost 3 to 1. Fourteen to 5, do you see that?
A I do, but then look at the Democratic districts, right, they also get a majority of seats. Where is the asymmetry? Where is this humongous asymmetry between the parties?
Q Is it your testimony that there is no asymmetry demonstrated by the exhibit?
A That's not my testimony. The asymmetry that Dr. Lichtman testified to is clearly not there, and if you use Judgeit, you can get estimates for what the asymmetry might be, what the asymmetry is.
Q And if you use Judgeit, you would be able to tell us. Is that right?
A Yes.

Q Now I believe you testified that one of the things that Dr. Lichtman did wrong was that he didn't study congressional data, he used statewide elections to be the litmus test by which he ascertained that there was partisan bias. Now you yourself in testimony you gave six months ago in the State of Texas reported analysis of partisan bias in which the only thing you had done was to use statewide elections plugged into the new districts to ascertain whether there was partisan bias. Isn't that true?

Page 42

A I did a very similar analysis, Your Honors, to what I did here today in terms of the majoritarian principle, and this is another take on the partisan bias question. But again in that case it was a completely different case, Mr. Smith, as you know. Your expert had already testified to what the partisan bias was using Judgeit, and I think you extracted from me the admission that Judgeit was the best method, I believe that I said that under oath on the stand in Texas even though I didn't do it, and I remain, that opinion has not changed. I still believe that's the case.

Q And you criticized the expert that used Judgeit and came in and did an analysis which in its essence is indistinguishable from the one that Dr. Lichtman presented in that you used statewide elections, plugged them into the new districts and ascertained whether or not each party is getting a fair share of the seats. Isn't that right?

A That's completely untrue.

Q What way is that untrue?

A I never in Texas provided an estimate that there is X percent bias in the Texas case.

Q Did I ask you whether you did that?

A You asked me if it was similar to what Dr. Lichtman

did. That's what Dr. Lichtman has done, and that's not what I did. That's not what I did because that's what you use Judgeit for. I didn't do that in Texas. I'm not doing it

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here today using this analysis.

Q What you did do in Texas was testify that having plugged the statewide elections into districts and the Republican were closer now because -- where the elections were 50 percent, the Republicans carried 50 percent of the seats and that therefore was an indication that that meant it was unbiased. Is that right?

A I'm sorry, I'm no t-- I didn't follow that entire whole line.

Q Maybe it was a poorly phrased question. The heart of your testimony in Texas was that a particular proposed map was not biased, and you came to that conclusion by plugging statewide elections into the new districts and ascertaining that where the Republicans got 50 percent of the votes, they got 50 percent of the seats. Is that right?

A No, that's wrong.

Q Let me ask you then to turn to Defendant's Exhibit 50, which I believe is your report from the Texas litigation. Do you have that?

A Fifty, 5-0?

Q Defendant's Exhibit 50 in a white book, binder 3. Do you have that?

A I do not.

MR. KRILL: Your Honors, I'd object to this line of questioning because I think we're here to litigate

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Pennsylvania, not to relitigate Texas, and I think this is clearly veering away from relevance.
JUDGE NYGAARD: I think he's challenging some of his methodology, and I think it's a legitimate line of questioning. Overruled. I don't seem to --
JUDGE YOHN: Binder 3.
JUDGE NYGAARD: I have it.
JUDGE YOHN: It's your exhibit.
MR. KRILL: Yes.
BY MR. SMITH:
Q Let me speak, it's also in our book. It's Defendant's Exhibit 11 is the same -- Plaintiff's Exhibit 11 is the same as Defendant's Exhibit 50. Do you have that?
A I do.
Q This is your report to the state board in the Texas congressional litigation?
A Right.
Q Turning to page 3 of the exhibit the underlined portion, you said to the court there, quote: "It is important to note that the line across the point at 50/50; that is, if the two parties split the vote 50/50, they also each get 50 percent of the seats. Political science literature refers to deviation from this idea as 'partisan bias'." Is that in fact what you told the state court in Texas?

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A Yes.
Q And your conclusions in that report were based entirely on statewide elections?
A Yes, what I did for Texas --

Q Yes or no, were your conclusions based entirely on statewide elections?
MR. KRILL: Objection, Your Honor. The witness said yes and then proceeded --
JUDGE NYGAARD: Did you say yes?
THE WITNESS: I did say yes.
JUDGE NYGAARD: Go ahead.
A Um, the -- first, I used all statewide elections, including judicial races, which Dr. Lichtman did not. Second, I made graphs for each -- for maybe five different plans that were proposed in the Texas case to demonstrate -- actually the first one is for the plan that was in effect during the '90's in Texas, and then I did it for four proposed plans to demonstrate how each of these comported with this same -- with the majoritarian principle. It's exactly the same thing that I did up here in my testimony.
BY MR. SMITH:
Q You told the court in Texas that the reason you were using statewide elections, as opposed to congressional elections, was that congressional election results have complications that incumbency and variance in cross races in

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terms of campaign finance, candidate quality and a whole host of other variances. Did you not tell them that?
A I did tell them that.
Q You also in the State of Texas did nothing to correlate statewide election results with congressional election results. Is that right?
A I don't recall here.
Q So while you came into court here today to criticize Dr. Lichtman's presentation of his correlations here, you did nothing of the sort when you gave similar testimony in Texas.

Is that right?
A I don't recall doing it, and if I did, you know, I wouldn't be surprised if you didn't take me to task on the stand for not doing it, Mr. Smith.
Q Do you have any criticism at all of the other half of Dr. Lichtman's testimony which is the way in which Act 1 treats incumbent congressmen?
A No, I didn't look at that.
MR. SMITH: Nothing further, Your Honors.
JUDGE NYGAARD: Redirect.

REDIRECT EXAMINATION

BY MR. KRILL:
Q Dr. Brunell, Plaintiff's Exhibit 22, which purports to be a summary of data from Defendant's Exhibit 89,
A Right.

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Q -- I note that on the bottom half of that exhibit three of the four races are national Republicans v. national Democrats.
A Correct.
Q Does that suggest anything about that point that you raised in your direct examination regarding a disjunct between national and state parties?
A Yes, I think it does. I think that there is some reason why national Republicans don't do well in the State of Pennsylvania, and I think it has to with a disjuncture between the national Republican party and the state Republican party. And again there is no -- there is none of this 3 to 1 bias. When the Democrats get the majority of the votes, they get the majority of the seats as well.
Q Now in Plaintiff's Exhibit 11, which is labeled your supplement analysis to partisan bias in the Texas case.

A Yes.
Q You did graphs that have dots instead of lines. Are those in some essential way different than the graph that you did in Exhibit 1?
A No, I actually drew that same -- the hypothetical curve depicted in Figure 1, and each one of the following figures, Figures 2 through 6 or 7, Figures 2 through 6, is just each one of those dots represents a single statewide election, and again we can figure out does this plan comport with the

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majoritarian principle or does it not by using each of those elections in graphing the Democratic vote percentage and the Democratic seat percentage.
Q Now in Plaintiff's Exhibit 11 on Figure 1 the hypothetical curve crosses right at the 50/50 point. Right?
A That's correct.
Q In that hypothetical case would that mean that there was no single election that violated the majoritarian principle?
A No, obviously there is elections usually aren't 50/50, right, even if they were, we probably couldn't actually tell that was the case, right? We reference this last presidential election. But this is the neighborhood that we expect things to be. I mean, the last presidential election was a pretty -- it might be a pretty good example, both candidates were very close in terms of votes, and the electorial college votes were actually very, very close as well. So it was kind of this symmetry between seats and votes.
Q But then you mentioned the Reagan/ --
A Mondale.
Q -- Mondale election as an example of a lack of

23 proportionality --
24 A Right.
25 Q -- between seats and votes. Correct?

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1 A Yes.
2 Q Yet it still adhered to the majoritarian principle?
3 A Right. You do not want to be the minority party in a
4 single member winner take all system because you lose a
5 disproportionate share of the seats, that's the way the
6 system is set up, and it's perfectly reasonable.
7 Q Now if you were to plot the 19 elections for
8 reaggregation shown in Defendant's Exhibit 89, Plaintiff's
9 Exhibit 13, under Act 1 where would all 19 of those elections
10 fall in your graph that is Defendant's Exhibit 102?
11 A They all fall in the upper right-hand quadrant or the
12 lower left-hand quadrant.
13 Q And what do those quadrants represent?
14 A The majoritarian principle at work. Whichever party
15 received the majority of votes also gets the majority of the
16 seats.
17 MR. KRILL: Thank you. No further questions.
18 JUDGE NYGAARD: Recross.
19 MR. SMITH: No, sir.
20 JUDGE NYGAARD: Any questions on recross?
21 MR. SMITH: No, sir.
22 JUDGE NYGAARD: You may step down.
23 MR. KRILL: Your Honor, I move the admission of
24 Defendant's Exhibits 101 and 102.
25 MR. SMITH: No objection. I move the admission of

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1 Plaintiff's Exhibit 22.
2 MR. KRILL: Although it -- recognizing that it
3 represents a summary, and we have not had time to check its
4 relationship to the underlying exhibit, Your Honor, I have --
5 with that reservation I have no objection.
6 JUDGE NYGAARD: All three are admitted.
7 HANK HALLOWELL, called as a witness, being duly
8 sworn or affirmed, testified as follows:
9 MR. KRILL: Your Honor, I call Mr. Hank Hallowell.
10 THE CLERK: State you name please.
11 THE WITNESS: Hank Hallowell.
12 THE CLERK: And would you spell your last name?
13 THE WITNESS: H-a-l-l-o-w-e-l-l.
14 MR. KRILL: Your Honor, before we proceed with Mr.
15 Hallowell, Dr. Brunell's wife is expecting their first child,
16 and today is her due date, and I'm -- I would ask the Court
17 permission to release him so that he can head back to
18 Binghamton, New York.
19 JUDGE NYGAARD: You don't have any objection to
20 that, sir? Nobody wants to be responsible for keeping you
21 here.
22 DR. BRUNELL: Thank you.
23 JUDGE NYGAARD: Thank you, you may go.
24 DR. BRUNELL: You're welcome.
25 DIRECT EXAMINATION

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1 BY MR. KRILL:
2 Q Mr. Hallowell, how are you employed?
3 A I'm a partner with the firm of Hallowell & Branstetter.
4 MR. KRILL: Your Honors, I have handed Mr.

Hallowell Defendant's Exhibit 51, which is in binder 3.
BY MR. KRILL:
Q Can you identify Defendant's Exhibit 51, Mr. Hallowell?
A Yes, it's my CV.
Q How long have you been with Hallowell & Branstetter?
A Since 1999.
Q What's your position there?
A I'm a partner.
Q What do you do?
A We're a political consulting firm.
Q What type of political consulting do you do?
A We limit our work to Republican candidates running for the legislature for state house, state senate, for U.S. congressional races.
Q Now before you formed the firm of Hallowell & Branstetter how were you employed?
A I was employed by the Pennsylvania State House Republican Caucus, and I was the Director of the Department of District Operations.
Q And what did that job entail?
A We were ultimately responsible for the smooth and

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efficient operation of the district offices of the 103 I believe Republican members of the Pennsylvania General Assembly.
Q Now in 1998 did you have a job of -- that involved electorial politics?
A Yes, I was Executive Director of the Republican State Committee of Pennsylvania and also simultaneously Executive Director of the Republican House Campaign Committee.
Q And in those jobs what were your duties?
A Well, they were numerous. I -- with the, if I can

divide the two jobs up for you, --
Q Sure.
A -- the state party job we coordinated the races that occurred within Pennsylvania, that cycle which included the governor's reelection effort, Senator Spector's reelection effort, all party building activities, the absentee ballot program across the state, coordinated efforts between all 67 county party chairmen, and I was also responsible for fund raising, for keeping the operation running as well. There are probably additional responsibilities, but those were the basic ones. But the House Campaign Committee I was responsible for candidate recruitment, which requires countless trips across the state interviewing any perspective person that we think might be in their wildest dreams interested in becoming a house member. And then ultimately

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targeting the elections that we were going to be interested in retaining the consultants to do the mail, the TV, the polling, hiring the managers to actually run the races and then execute the plan.
Q The second page, third page of your curriculum vitae contain a list of election races. What do those represent?
A Well, they are a -- kind of a very bumpy road from about 1982 until the present of some of the larger races that I was involved in either as a manager or in my job as executive director of either of those bodies or in our consulting firm to date. There are some small county municipal races that are not included in that, but those are the major ones.
MR. KRILL: Your Honor, I offer Mr. Hallowell as an expert in political consulting in Pennsylvania.
MR. SMITH: No objection.

BY MR. KRILL:
Q By the way, Mr. Hallowell, when you were first asked in this case whether you considered yourself an expert, were you uncomfortable with that term?
A Well, I don't like the term, but I understand the legal connotation of the term.
Q Why don't you, why don't you like this?
A Well, I know this may seem strange to many people, but I'm a Quaker, and I don't like that sort of terminology,

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self-grandizement, et cetera.
Q Well, I'm afraid the lawyers have forced it on you.
A Right, I understand.
Q Now you heard Mr. Ceisler's testimony, didn't you?
A Today, yes, or yesterday and today, yes, I did.
Q And previously you heard his testimony at the Daubert hearing?
A Yes, that's correct.
Q And did you also hear his or read his deposition testimony?
A Yes. Yes, I have.
Q And you heard Mr. Ceisler's conclusions about Act 1, didn't you?
A Yes, that's correct.
Q Do you agree with his conclusions?
A Not entirely, no, I don't.
Q Let's examine some of his conclusions piece by piece. First, I'm going to ask you to refer to the map of Act 1. Now Mr. Ceisler testified that he felt that Congressman Mascara or another Democrat couldn't win in district 18 or would have a very hard time winning in district 18. Did you hear him to that effect?

A Yes, I did.
Q First, with respect to Congressman Mascara, after hearing Mr. Ceisler's testimony and, by the way, you heard

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Congressman Mascara's testimony in Commonwealth Court, too, didn't you?
A Yes. Yes, I did.
Q Now, well, prior to this case beginning, when you first took a look at the redistricting under Act 1, did you believe that Congressman Mascara could win in district 18?
A I thought it would be between Senator Murphy and Congressman Mascara.
Q Yes.
A I thought it would be very close. I believed as a Republican, of course, that state Senator Murphy would defeat Congressman Mascara, but I did think it would be a very tough, close race.
Q Now do you think that the 18th district is unwinnable by a Democrat?
A No, I do not.
Q I'm showing you Plaintiff's Exhibit 2B, which is a blowup of the 18th district.
A Yes, I see that.
Q Why don't you think the 18th is unwinnable?
A Well, contrary to much of what we heard here, the South Hills, which, of course, is that tier of the 18th between the Washington County line and the Allegheny 14th district line, has a long history of electing Democrats. Now currently we talked about how Senator Murphy is seated there and how --

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and I have testified previously that we hold three Republican house seats there in that region running roughly from Bethel Park in Mount Lebanon all the way over to Moon Township in the far, far left. But, let me say this, while I was Director of the State House Campaign Committee, in order to retain those seats we spent $480,000 on two seats in a general election and in a special election to regain the three. At the same time my colleagues at the other side of the capitol were spending $450,000 to elect now state Senator Murphy who is running for Congress. Those are very big numbers that we used to pick up those seats, which is what two of those seats were for the house, they were called a pickup. When you have an open seat, you pick it up. Prior to 1995 when I first unveiled those budgets to Speaker Ryan and the Majority Leader Perzel, they had really spent $60,000, those kinds of numbers in the house seat. They had never seen anything like that, and I can still remember the look on the speaker's face when I gave him those budgets. But quite frankly we have those seats because of good candidate recruitment, bad candidate recruitment on the part of the Democrats and then executing aggressive campaigns through the region.

Q What are the elements of an aggressive campaign, of the aggressive campaigns that you executed there in that region?

A Well, first a candidate -- let me go back a step, first

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candidate that is a strong contrast to the opponent. For example, if I can use an illustration, in the 44th district they had an outgoing member that had been there a number of years named Tug McGraw or Huck Gamble, rather, and they

nominated in a contentious primary a fellow McGraw who served previously in the house in the late '60's and early '70's who had missed 3,000 votes. We nominated a young army veteran who had gone to West Point. It was a strong contrast. A similar situation in the 42nd --

Q Excuse me, when you say that the Democratic candidate missed 3,000 votes, you mean legislative votes?

A Yes, that's correct.

Q Not being in his seat when the votes were taken?

A That's correct, 3,000, roughly 3,000 legislative votes, an awful lot quite frankly. Then we ran aggressive -- both the house and senate ran aggressive campaigns. That's means an active voter contact plan, 12, 14, 15 pieces of targeted mail, a thousand gross rating points on broadcast television in the Pittsburgh media market. That's an aggressive campaign.

Q That's what it took to win that district for the Republicans?

A Yes. If I spent all of that money and hadn't won it, I'd hate to have thought what the consequences would have been. But my point, my larger point, is that the Democrats

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in the South Hills of Pittsburgh are not running out voting Republican at their earliest opportunity. It takes a lot of work and coordinated effort for that result.

Q So how important is that organizational factor in terms of a pattern of Republicans getting Democratic votes in western Pennsylvania?

A It's crucial. I mean, there is no other way to do it quite frankly. Now we're faced with an open -- apparently an open congressional seat where we have a state senator, not a Republican state senator facing -- well, we'll know by 5 p.m.

today who he's facing, an unknown apparently Democrat, and quite honestly again it's a case of candidate recruitment, and I think the Democrats inexplicably seem to be attempting to set themselves up for a loss here, and I can't understand why.

Q Why do you say the Democrats are setting themselves up for a loss in the 18th?

A Well, apparently they don't have a strong candidate. The only candidate that I have heard rumored about is a potential for the Washington County sheriff to run there, and I have no idea whether that's true or not, Your Honors, that's just what I have heard. So it quite frankly looks as though they're going to continue their recurrent history of losses in the South Hills.

Q Now let's turn to another congressional district, while

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we're on Plaintiff's Exhibit is it 2D?

A 2B.

Q 2B, as in boy, let's look at the 4th congressional district under Act 1. You're familiar with that district, aren't you?

A Uh-huh.

Q Is that a yes?

A Yes, I'm sorry, yes.

Q And who is the incumbent in that district?

A I believe that that is Melissa Hart.

Q Now who held that district before Congresswoman Hart?

A Representative Klink.

Q And was he a Democrat?

A Yes, he was.

Q And when did Congresswoman Hart win that seat?

A 2000, the 2000 election.

Q Just two years ago?

A That's correct.

Q So she turned it from a Democratic held seat to a Republican held seat?

A That's correct, it was an open seat, and she ran for it.

Q Was that an easy win for her?

A No, it was a similar scenario. Again in North Hills the same dynamics really occur at all levels quite frankly of

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elected politics in Pennsylvania. It was, you know, an aggressive campaign put on by a good candidate versus a campaign really by the Democrats that faltered for similar dynamics that we discussed in the South Hills, and then we, the Republican, excuse me for the we, went on and our firm did the race and special election to retain her state senate seat against Jim Renee.

Q Where was the state senate seat?

A It's -- can I get up?

JUDGE NYGAARD: Sure.

A It's right in this area. (Indicating.)

BY MR. KRILL:

Q The witness is circling the area --

A Actually over that way.

Q -- around the red No. 4 on Exhibit 2B, as in boy.

A And again it was a similar situation.

Q What was the situation there with her state senate district that she was giving up for Congress?

A Well, the Democrats recruited someone who had seemed to be a great candidate, the son of the owner of the Steelers, against a house member who had represented this area of the district, and our candidate made thousands of telephone

calls, and quite frankly the Democrat Jim Rooney did exactly what I would have hoped he'd done, rather than differentiate himself from his family and try to develop his own image, he

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ran on the fact that his grandfather was Art Rooney, and they had Franco Harris going door-to-door and taped telephone calls and all sorts of Steeler memorabilia, and they ultimately I think in a race that is 40 -- maybe 42, 43 percent Republican, we ended up with 60 percent of the vote in the special. So it's just really indicative of the region and the kind of races and candidates that the Democrats seem to put out. And I don't understand it, but from a partisan standpoint I'm thankful.

Q Now Congresswoman Hart is a freshman member of Congress. Is she also a fairly young member of Congress?

A Yes, sir, that's correct on both counts. I don't know her age, I couldn't tell you.

Q I'm not going to ask you.

A Okay.

Q But is it fair to say that she's, you know, she's in a position where she might easily run for a state row office or for some other political office?

A I think that's a fair, fair statement, yes. It's hard to know what's -- I don't know what's in the Congresswoman's mind, but I'd say she's positioned to do such a thing.

Q And such things do happen, don't they?

A Yes, that's correct.

Q If Congresswoman Hart leaves, gives up that seat to run for another office somewhere, would that -- would under Act 1

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would district 4 be a safe Republican open seat?

A No, no, it definitely -- most definitely would not.

Q Why?

A Well, first of all, other than the three urban congressional seats, and by that I mean the two in Philadelphia and the one in center Pittsburgh, I personally do not believe and could make a case that there are legitimately no safe seats, open seats, in Pennsylvania. When a seat becomes open, it isn't safe for either party. The 4th district I think could, depending on who the Democrats pick and who the Republicans might pick and what sort of campaign they ran, could go either way. And, unfortunately, we have a rich and checkered history of losing safe seats at various levels around this state, so it could go either way.

Q Well, let me ask if you recall an example of such a flipping of seats in history. Under the Pennsylvania Supreme Court's 1992 plan do you recall the history of the 18th congressional district under that plan?

A To a degree I do but not overwhelmingly well, no.

Q Do you recall that that was a seat held by Congressman Santorum?

A That's correct, right.

Q And what happened to Congressman Santorum?

A Well, he obviously now is our U.S. Senator, but

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ultimately it was because he was facing a battle that he believed he could not overcome and took an even larger gamble and ran for the U.S. Senate seat that no one thought he'd win. Very similar to his history of being elected to the

U.S. House and io and behold he won.
Q You're saying that with respect to Congressman Santorum he had a history of no one believing that he could win?
A His first victory in the -- to Congress was an uphill battle. He worked very, very hard, very tenaciously, a great deal of voter contact, a great deal of one-on-one and overcame the odds with the help of his consultant and was successful.
Q And in that race did he unseat an incumbent Democrat?
A Yes, that's correct, it was an unexpected victory.
Q And then he retained the seat under the 1992 plan for one cycle?
A That's correct.
Q And then left to --
A In 1994, that's correct.
Q And when he left that seat to run for the Senate in 1994, did it stay Republican?
A No, it did not.
Q What happened to it?
A It reverted back into the Democrats' hands as the seats out there generally would go when the Democrats nominate a

decent candidate and run an aggressive campaign.
Q And do you believe that that could still be the case for the Democrats under Act 1 in western Pennsylvania?
A Absolutely because if it weren't -- well, let me go back and say if that were not the case, if that were not true, the senate and the house wouldn't have spent nearly a million dollars there in 1996 to pick up what we currently hold.
Q How many counties in Pennsylvania have you physically visited in your career?

A I would imagine I probably have been in all of them at one time or another.
Q Now while we're on the map of western Pennsylvania, let's look at the 12th congressional district where Congressman Murtha would be running as an incumbent and apparently running, as we know now this morning, against Congressman Mascara. First, let me ask you about the geography of the 12th district. Does the geography of the 12th district suggest anything to you about the political or economic history of western Pennsylvania?
A Well, it trails the river valley areas through western Pennsylvania. As you can see, in the north to Johnstown and then across the bottom through Westmoreland and Washington. They are the old and obviously not -- starting with Johnstown they are all the old mill totals and steel mill towns and that

sort of thing through the region. With the exception I think possibly of the upper portion of Indiana that's included in the district.
Q There are some coal areas in there?
A Yes, that's correct.
Q Would that be up in Indiana and down in green?
A That would be right, yes. I don't know how much coal or steel is done there now, but, I mean, that's the history.
Q Now let's turn to the eastern side of the state.
JUDGE NYGAARD: Before you go on to a new area, new subject, let's take our 10 minute break now and be back in here just a little bit before ten of three.
Mr. Krill, is this --
MR. KRILL: This is my last witness.
JUDGE NYGAARD: Your last witness. Okay.
(A recess began at 2:40 p.m. and the case continued

at 2:50 p.m.)
JUDGE NYGAARD: Mr. Krill.
(Hank Hallowell continued as the witness on direct examination.
BY MR. KRILL:
Q Mr. Hallowell, before we turn to southeastern Pennsylvania let me just ask you this, you appear to be in some discomfort while you're testifying. Is that true?
A It's just I had some shoulder surgery three and a half

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weeks ago, and it gets tough to find a comfortable spot for it.
Q Just please let us know if you need a break or --
A It will be fine.
Q All right, thank you. Now you have in front of you plaintiff's exhibit map that is a blowup of Act 1 for southeastern Pennsylvania. Mr. Hallowell, have you consulted on or run campaigns in southeastern Pennsylvania?
A Yes. Yes, I have.
Q Can you name just a few?
A Well, my very first one I managed was Jim Coyne's congressional race in 1982 in the 8th district in Bucks County. I'm from Lower Moreland Township. I have -- I was a committeeman there for seven years I suppose, and obviously as a committee person, you're involved in every race that comes down the road. We did the county commissioners race there in 1991. I did a number of state house races there. We did the Tilghman versus Yeakle race in the 17th Senate seat. I did the 1992 congressional primary there to name a few.
Q Now let's look at the 13th congressional district under Act 1. Are you familiar with that?

A Yes. Yes, I am.
Q Now you heard Mr. Ceisler's opinion about the 13th where he thought that Congressman Hoeffel would -- I'm not

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sure exactly how he phrased it, would basically have an uphill fight?
A Well, he believed that if I guess Congressman Borski, he'd have an uphill fight against a prolife Democrat from Philadelphia, and in the absence -- and then, excuse me, then a Republican would stand a good chance of defeating Mr. Borski in the general election, and I believe yesterday said that it looked like Congressman Hoeffel would be successful and ultimately then had a better chance of winning the general election against a Republican.
Q And do you agree that Congressman Hoeffel is likely to win in a general election?
A Yes, I think the Democrats will retain the 13th district, I do.
Q And why is that?
A Well, currently it's held by Congressman Hoeffel. It now picks up a much larger number of Democratic voters from the city. Congressman Hoeffel ran for that office four times before he ultimately won it. He's a tireless campaigner, does an excellent job in communicating. I don't know whether that's due to Mr. Ceisler or not, but he does an excellent job at that, and I personally do believe that he will retain the votes that he gets out of the 13th district in the Montgomery County portion, and I think he'll do very, very well in what had been Representative Borski's district.

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Q Now the 8th congressional district, who is the incumbent there?
A Congressman Greenwood.
Q And he's a Republican?
A That's correct.
Q Has the 8th always been a Republican seat?
A No, no, it hasn't. I know that unfortunately all too well. It was in 1976 when Congressman Biester retired, the Republicans lost it to Peter Kostemyer, who held it until 1980 when he was defeated by about I believe 12 to 13 hundred votes by James K. Coyne, not to be confused by Congressman Coyne of Pittsburgh, and then in 1982 came back to defeat Congressman Coyne by I believe it was 640 votes and took the seat back and held it until he was then in turn defeated by Jim Greenwood.
Q So it's gone Republican, Democrat, Republican, Democrat, Republican?
A That's correct, I think that's correct.
Q Or something like that?
A Right.
Q And is the 8th district under Act 1 substantially the same as the historical 8th district that you have described?
A Substantially. I mean, as I said, I grew up in Lower Moreland Township, which is right at the very edge here, (Indicating.) and Lower Moreland had always been part of the

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8th district. There has always been a portion of that part of the eastern -- northeast edge of Montgomery County that's been part of the Bucks County district. That's how I was elected as a delegate to the Republican National Convention

because the two county chairmen had struck a deal that one seat went to that little piece in Montgomery County, and I was it.
Q Now you pointed to Lower Moreland Township. Is that in Montgomery County?
A Yes. Yes, it is.
Q And you're saying that historically it was in 8th district which is centered in Bucks County?
A It was in the 8th district up until I believe 1990. I think part of it was in it actually right up until 1990, that's correct.
Q And is Lower Moreland in the 8th district under Act 1?
A No, it's in the 13th.
Q However, you said that there has always been some part of Montgomery County that's been picked up by the 8th district, is that true, under Act 1?
A Yes, there is a portion of Upper Moreland, I actually lived for about six years in Upper Moreland Township when I was first married. They call that the panhandle of Upper Moreland and hugs Hatboro. That is in the 8th district of this map, and as it has been in that portion of Upper

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Moreland has been in the 8th district in the past, and then goes over and picks up a portion of Upper Dublin and it looks like a ward or two of Abington Township.
Q Now what you have just described, those portions of Upper Moreland and Upper Dublin and Abington that are in Montgomery County but are part of the 8th district, have you heard that geographic area referred to as the "Greenwood gash"?
A Yes, I heard Congressman Hoeffel refer to it that way in testimony in the Commonwealth Court.

Q But you're saying some or another part of Montgomery County has always been attached to Bucks County in the congressional district?
A Yes, that's correct.
Q Now the 6th district under Act 1, there is no incumbent there, is there?
A No, that's correct, it's I characterize it as an open seat.
Q Now over the past decade there have been population shifts in southeastern Pennsylvania, haven't there?
A Yes. Yes.
Q Can you describe those shifts?
A Well, there has been a substantial amount of development. When I was -- years ago, I go 20 years ago, most of the -- well, in fact I'll use my own home as an

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example if I could. Our place was a family farm that had been in the family for 200 years. We subdivided that in 1960. The subdivision -- and that's Lower Moreland at the very edge. That would be 1960. The subdivision has gradually creeped out. Now it's as far out as this center ring and arc shape through that portion of southeastern Pennsylvania. So the suburban sprawl, we have heard it characterized as, that's one reason that open space is now a large issue with all of the voters in that region, has slowly crept, and it continues to creep out. I think it's in Upper Bucks. It's beyond Upper -- it's in Upper Providence and Limerick Township in Montgomery County, Franconia. It's very far out in Chester County. Delaware County is completely built out. So there has been substantial growth to answer your question.
Q Over the last 10 years what county in southeastern

Pennsylvania has been the biggest loser in population?
A Philadelphia, and they have come out into the areas that had been developed in the '50's, Cheltonham in Montgomery County. Most of the post war neighborhoods that were developed, Delaware County, for example, are seeing a lot of the Philadelphians move out to that area, and the folks who had lived in those areas have leap frogged out into central Bucks, upper Bucks, central Montgomery County, et cetera. So it's a migrational pattern that's occurring.

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Q Now I'm not asking you for precise figures, but have the suburban counties around Philadelphia experienced growth?
A Yes, they have.
Q Is it fair to say that with some exceptions it's been doubled digit population growth?
A Yes, I believe that that's correct.
Q What suburban county would be the exception?
A That has not experienced double digit growth?
Q Yes.
A Delaware County because, as I said, it's completely built out.
Q But you're saying then that Chester, Montgomery, Bucks --
A Buck, Lancaster, Berks, I believe Lehigh, Northampton, Monroe, Pike, all the way along that mountain ridge has experienced growth.
Q Now in terms of population shifts would that logically to you have an impact on where congressional districts are located?
A Well, yes, logically it would, absolutely. You have got to make up for the decrease in population in Philadelphia and at the same time compensate for an increase of growth in

the suburban districts.
Q Does an open seat in the fast growing area make sense to you?

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A Logically it does, yes.
Q Now the 17th congressional district under Act 1 now contains the residence of two incumbent congressmen. You're aware of that, aren't you?
A Yes. Yes, I am.
Q And who are they?
A Congressman Gekas and Congressman Holden.
Q And one is a Republican?
A That's Congressman Gekas is a Republican.
Q Congressman Holden is a Democrat?
A That's correct.
Q In your opinion is Congressman Gekas' victory assured in the 17th district?
A No, absolutely to the contrary. I think it's a -- I think it's a toss up.
Q And why is that?
A Well, first, Congressman Gekas is a long term -- he went in in 1982 when we went out of office. He's a long term incumbent. To the best of my knowledge he has not had a difficult race in a very long period of time. When I say difficult, a challenging race. I believe I have a vague understanding of what his cash on hand is in his campaign account, and to the best of my knowledge it is or was under a hundred thousand dollars. Congressman Holden, on the other hand, has a long history of being very aggressive, very

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popular, runs real races because he's challenged, and I was contacted by the National Republican Congressional Committee two years ago during 2000 to help them find a candidate and candidate recruitment since I have done so much of it, and I talked to the district attorney of Berks County and surveyed that city. When I saw we, let me clarify we and say the National Republican Congressional Committee paid for a survey of that seat so we could see whether it was winnable or not.
Q Now are you saying you were asked by the Republican National Committee to recruit a candidate to run against Congressman Holden?
A No, I'm saying I was asked by the National Republican Congressional Committee to find a candidate to run against Congressman Holden, a good candidate, quote, unquote. Which good is defined as someone who potentially can win.
Q And you were talking about a survey that was done.
A Yes, the congressional committee did a survey with public opinion strategies of Congressman Holden's district and tested him against our district attorney. The district attorney had a tremendous amount of name ID positive, as all DA's generally do because they get a lot of positive press, and the DA was doing fine until we matched him up with Congressman Holden, and then it was quite frankly no contest at all. So the end of the story is that the DA decided not to run. They had to go hunt for a poor candidate who barely

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was able to get enough signatures to file and Congressman Holden went on to become reelected.
Q Okay. So again the -- are you saying that candidate recruitment and organization is a major factor?

A Yeah, I'm going to make one other point here, and that is that these -- the three suburban areas, the major three suburban areas, Delaware, Montgomery, Bucks have always had one seat out as a Democrat. Costmeyer represented Bucks. Edgar represented Delaware County for a very long time, a popular Democrat. Montgomery County was represented by Couglin. You know, we won --
Q Excuse me, Coglin, who is Coglin and --
A Couglin. He preceded Representative Mezvinsky, M-e-z-v-i-n-s-k-y.
Q All right, and Mr. Coglin and --
A Couglin.
Q -- Couglin and Representative Mezvinsky were of what party?
A Congressman Couglin was Republican and Congresswoman Mezvinsky was a Democrat.
Q So within Montgomery County there have been switches of which party held the seat. Correct?
A Yes, that's right, as is typical of the southeast. It flips back and forth depending on the candidate.
Q And you referred to Congressman Edgar in Delaware

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County?
A That's correct.
Q And who holds his seat?
A That's Congressman Weldon's seat now.
Q That's the 7th congressional district under Act 1?
A That's correct.
Q Is Congressman Weldon safe in his seat at the moment?
A At the moment he is, but I believe as soon as that's an open seat, it will once again be highly contested, and I believe potentially up for grabs.

Q How important is incumbency in determining the safeness of a seat?
A I'm trying to think. During my time in the state house and at the state party I'm sorry to say I never defeated an incumbent. We lost two incumbents, if you consider the representative district to be an incumbent. We also lost Colley Gean, who was in the 149th district in Montgomery County, Philadelphia main line, and that is again another good example of a wonderful person, conservative, prolife Catholic in a seat that does not support a conservative prolife Catholic, and she survived one term and was defeated by Connie Williams. So time and time again the point is that candidate recruitment is very important in making sure that you retain an open seat.
Q Now let's look at the 10th congressional district.

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Let's switch from the southeast up to the northeast, the 10th, is that a safe Republican seat?
A Well, it's I believe safer for Congressman Sherwood than it was, but I think if it was open, it certainly would be potentially at risk.
Q Did Congressman Sherwood have a tough fight in his last campaign?
A Yeah, he had two tough fights. He had a tough fight in his last campaign against Pat Casey, and he had a tough fight the time before that against Pat Casey.
Q Now the 11th congressional district, whose district is that?
A Congressman Kanjorski.
Q Is that a safe district for him?
A As a sitting incumbent, yes, I believe it is.
Q If he vacated that seat, would it be a safe Democratic

seat?
A It would be a difficult seat to win for a Republican. However, there is a great influx in Monroe County, which is Republican, increasingly Republican county, and certainly you attempt to recruit the very best candidate you could recruit or attempt to recruit.
Q While we're on the subject of northeast Pennsylvania, do you happen to know which counties in Pennsylvania gained the most population over the last decade?

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A On a percentage basis Pike and Monroe.
Q Pike being in the new 10th congressional district and Monroe in the 11th?
A That's correct.
Q Do you know approximately what percentage of growth they had?
A Pike is very large. I know it's double digit. I think it could be close to 15 percent, but I'm absolutely not positive.
Q Now let's move across the state to the northwest and the 3rd congressional district. Who is the incumbent there?
A Congressman English.
Q Republican?
A Yes.
Q Is it a safe seat in your opinion for him to win reelection?
A Yes, it is.
Q If he leaves, will it be a safe Republican seat?
A I firmly believe that that would be vigorously contested by the Democrats.
Q Why do you believe that?
A Well, there is no safe seat that has Erie in it. There

is no safe seat in Pennsylvania for the Republicans, open seat, to just assume they're going to walk in aside from the three urban seats and --

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Q Urban seats?
A Three urban seats.
Q Are those safe? You don't mean those are safe for Republicans, do you?
A No, they are safe for Democrats.
Q I see. So you're saying the 1st, 2nd, and 14th congressional districts are safe for Democrats?
A Yes, they would be. It would be -- it would be fruitless for the Republicans to contest those even if they were.
Q All right, but as to every other district in Pennsylvania under Act 1 besides the 1st, 2nd and 14th, if the seats are open, do you think it's a sure bet for either side?
A Yeah, and I believe that both parties would allocate resources to pick those seats up.
Q Would it be worth doing it for both parties?
A Yes, I think that there is an opportunity there.
Q Now when you are managing a campaign or advising a candidate on whether or not a seat is worth going after, what factors do you look at?
A If you came to us and you were interested in seeking a post in whatever body you are running for, we first look at your own bio, what your background is. I would ask you a few very specific questions about why you were running. We take

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a look at where you are geographically in the region, in the district, and what you bring to the table, whether you bring any base vote with you, any prior post that you might currently hold. We'd look at the opponent. I would order the vote history for the district and review that to make some determination what the possible model might be for a turnout model.
Q What vote history would you look at?
A Well, what we do if you were running for the state senate, I would look for the vote history in that district for the last four like elections, in other words, the last four state senate elections, the last three elections right straight up, and then I would see where the Republicans were coming from, what ward the Democrats were coming from, what the total household count might be, what the median age of the likely voter would be, which the vote history will tell us, what percentage of female will be out, what percentage of male would be out, so that we can tailor a message based on -- not a message but rather a budget, a voter contact budget, based on the counts that will be in an immediate race. Then we may or may not choose to commission a benchmark poll to see what local issue may be present, how other local elected officials may play in that area, what your name awareness might be, what your opponent's might be and then we ask one verbatim questions that are open-ended questions as to what

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the local issues might be that you are interested in, et cetera. And then we take a look at the results to better understand where your beliefs might match with the district's and what issue we might want to run on in various segmented

parts of the district.
Q Do you make judgments on a candidate-by-candidate, district-by-district basis as to all these factors?
A Yeah, nothing is the same. There is no campaign that is the same as the next campaign. I have never had one. There are some mechanical features on male polling, TV, et cetera that are similar in timing, but the messages are always different, and the issues vary from race to race. And they're dictated by as much your own candidate as the opponent.
Q Now at the congressional level in your opinion is it worthwhile to look at state legislative districts that are wholly or partially nested within a congressional district?
A They help you determine what way the vote has gone within that district in the past.
Q Would you use state house district?
A Yeah, I may, I may use state house district, but I may use state senate district, it depends how the district breaks geographically. If you want to use, um, the 6th as an example, clearly the Montgomery County segment is a stand alone segment, and if I were going to poll that, I would poll

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that separately, and it might not be a separate message that might play there. It might require two messages depending on the territory of Lower Merion, but many times districts seem to naturally break along state house lines. They're about roughly depending on the geographically six -- as many as six state house districts sometimes and as many as two and a half or so state senate seats that we're dealing with on a congressional basis.
Q Now when you step back and look at Act 1 as a whole, can you draw any conclusions about its fundamental

characteristics?
A Well, I made a statement in an earlier deposition that I believe that it protects the incumbents who are not paired, and I still believe that, that the incumbents that are not paired are largely protected.
Q Now when you look at the order between the 8th and the 13th districts under Act 1, do you see anything based on your experience that looks to you like cracking of Democratic votes?
A The 8th and the 13th?
Q Yes.
A And I'm reflecting back on earlier testimony, and I believe cracking is splitting a Democrat vote area in two. Is that correct?
Q Something like that. If you don't understand the

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terms, that's fine.
A Well, okay. I don't see it the way I understand the term in either the 8th or the 13th district.
MR. KRILL: All right. I have no further questions.
JUDGE NYGAARD: Cross examine.

CROSS EXAMINATION

BY MR. SMITH:
Q Mr. Hallowell, I want to be clear on exactly where it is you agree and disagree with Mr. Ceisler. He said, as you'll recall, that he thought that the outcome of the new math would be either 13 to 6 in favor of the Republicans or 14 to 5. Do you recall that testimony?
A Yes, I believe I do.
Q Now your testimony is I believe that of the 11 Republican incumbents, 10 will win relatively easily. Is

that right?
A Yeah, I believe my deposition is 10, 6 and 3, if I recall correctly.
Q I'm asking you now about the Republicans. You believe 10 of the 11 incumbents will win easily?
A Ten Republicans, that's correct.
Q And among them you talked a little bit about Representative Hart in district 4 in the western part of the state. Her district actually is substantially more

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Republican than it was before, is it not?
A Yes, I suppose it does.
Q And Mr. Sherwood in district 10, his district becomes substantially more Republican as well?
A Yes.
Q Now in addition to those 10 districts that would be won by Republican incumbents, you also now believe that district 18 will be won by a Republican?
A Well, apparently that's correct. That's a change since February 20 when I was opposed. Inexplicably the Democrats seem to be giving that seat away.
Q When you were deposed, you testified that Mr. Mascara would lose to Mr. Murphy, did you not?
A Narrowly I thought that, but if you'll see I believe I also said that I thought it was going to be a toss up, but the narrow edge going to Mr. Murphy.
Q In fact you said Mr. Mascara would lose in a close race, did you not?
A I'd have to consult my deposition.
Q Referring then to page 99 of your deposition, Mr. Hallowell, the question starting at line 21 was: Just so the record is clear, it's correct that factoring everything in

you think that Senator Murphy would defeat Congressman Mascara? Answer: Yes, that's correct, but I think it would be a close election if it were to occur. Were you asked that

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question and --
A Yes, that's correct.
Q So we have the 10 Republican incumbents who will win district 18 there or 11 --
A Right. Right.
Q Of the 10 Democratic incumbents you're predicting that sxi will win. Is that right?
A That's right.
Q Either Mr. Murphy or Mr. Mascara in district 12?
A I got lost. Would you back up again please.
Q There are 10 Democratic incumbents now?
A Yes.
Q And you're predicting that six will win?
A That's correct.
Q That's either Mr. Murphy or Mr. Mascara in district 12. Mr. Hoeffel district 13. Mr. Brady and Mr. Fattah in the two Philadelphia districts. Mr. Kanjorski in district -- will that still be in district 11? Is that correct?
A I'm sorry?
Q What district is Mr. Kanjorski in?
A Eleven.
Q And Mr. Doyle in Pittsburgh. Is that right?
A That's correct.
Q So when you say that it's a map that protect incumbents who aren't paired, it's incumbents who aren't paired or Mr.

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Mascara, I take it?
A Well, no, if you consult my deposition, you'll see that I believe I said that I felt Mr. Murphy was going to win.
Q Yes, but --
A I still believe that.
Q He wasn't paired in that, was he?
A No, he was not.
Q In any event, that leaves ii Republican victories that you are predicting, 6 Democratic victories that you are predicting and the final two districts are district 17. First of all, that's the district in which Mr. Gekas has been paired with Mr. Holden, and your view is that that is a toss up with the small edge going to Mr. Gekas. Is that correct?
A That's correct.
Q That's because most of the people in that district are former constituents of Mr. Gekas. Is that right?
A Yes, that's correct.
Q That's a district that Mr. Bush won or Mr. Gore by about 14 percent?
A It could be, I don't have the figures in front of me.
Q That's correct, he was about where he came out in that area of the state?
A What were the numbers again?
Q Fourteen percent victory by Bush over Gore.
A Possibly.

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Q Okay. Then the final district is the open seat district 6, and I don't believe today you gave us testimony about how you think that district will come out. Do you have a position?

A I wasn't asked.
Q Do you have a position on that?
A Yes. Yes, I do. I think that's a toss up as well.
Q So your position is, to sum it up, that there are 11 Republican victories and you're predicting 6 Democratic victories and 2 toss ups if you count Mr. Gekas as a toss up and district 6 as a toss up. Is that correct?
A That's correct, with the understanding that the 18th seems to be an inexplicable win for us.
Q What happened was Mr. Mascara decided to move to district 12 or not according to your prediction. Is that right?
A I can't hear you, I'm sorry.
Q It would have happened whether Mr. Mascara moved into district 12 to run again Mr. Murtha or not because your prediction was that he would lose to Senator Murphy in any event. Is that correct?
A Yes, that's correct.
Q Is that a yes?
A Narrowly, yes.
Q Let me ask you about the two toss up districts. You

don't have any doubt, do you, that the people that drew this map intended to draw a district in which Mr. Gekas would beat Mr. Holden, do you?
MR. KRILL: Objection, lack of foundation, beyond the scope.
JUDGE NYGAARD: No, I'll let him answer.
A Can I have the question again please.
BY MR. SMITH:
Q You don't have any doubt that the people who drew the map intended to draw the district in which Mr. Gekas could

beat Mr. Holden, do you?
A I don't know what the intent of the people were that drew the map, so I really can't answer that.
Q So your supposition is that the people that drew this map put a Republican incumbent in and the Democratic incumbent in without making any effort to make the vote a Republican seat?
A Apparently.
Q And you don't have any information then about what the intent was of the people who drew the open district 6. Is that it?
A No, I was not involved in drawing the map.
Q You can't give us any explanation about why district 6 goes from the middle of the City of Reading, down in Chester County, then has a tongue that moves all the way down into

Lower Merion, why they decided to draw it that way?
A No, I have no I idea why the map was constructed. I can only testify that I think it's a toss up.
Q Do you think Senator Gerlach will be the Republican nominee?
A Yes, I do.
Q I wanted to ask you just one question, I believe you mentioned something about rivers in district 12 in the western part of the state. Is it your testimony that that's the natural kind of districting position that they came upon because they had rivers involved?
A No, it was my -- I believe my testimony that I was asked what the rivers indicated to me, and I said that they represented where steel mills, coal and that sort of thing had been in that region in the past.
Q Let me just ask you now about your testimony about this

little piece of district 8 that comes down into district 13. You said there has always been a piece of district 8 that comes into Montgomery County in the past. Is that correct?
A Yes.
Q Has there ever been a piece that comes almost to the point that virtually touches the City of Philadelphia down here? (Indicating.)
A No, to the best of my knowledge it stopped previously right along this road. (Indicating.)

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Q The previous piece was Horsham Township?
A Well, that's right, it's Horsham Township, and previous to that it was Upper Moreland and a part of Lower Moreland, and then prior to that it was all a portion of Hatboro, Upper Moreland and Lower Moreland. So it was either an entire long box, a short rectangle or part of all of those things.
Q And the particular piece that has been denigrated as the "Greenwood gash" is only few hundred yards wide at the north end here. Is that right?
A No, it looks likes it's a only few yards wide, but if you were there on the county run road, it's much larger then.
Q Actually I asked you a hundred yards wide?
A I think it may be even further than that.
Q In any event, it's true, is it not, that this particular little piece that has been carved out here is the most Democratic area in that part of the county?
A No, if I were going to remove Democrats from Montgomery County to the 13th district in a long gash, if I want to use, continue to use the word gash, I would have had the map drawers come across just a little further up and go across in either Plymouth Township or grab Norristown quite frankly.
Q Well, in fact they did grab Norristown, did they not,

and pull it into district 6 so it wouldn't be in district 13?
A I have to find it on the map.
Q This is Norristown right here. (Indicating.)

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A That's not legal. It says Montgomery Township. That is -- that is the Borough of Norristown.
Q Norristown has actually been pulled out of Montgomery County along with Lower Merion and put into this district that goes up into Berks County?
A That's true, yes, um-hum, but quite frankly I know those voters in Upper Dublin and Upper Moreland and that portion of Abington, and they don't have any particular tendency to vote Democrat.
Q Is there an African American community that lives in that part of the state?
A A very tiny portion and I believe it's further down the edge of that particular map. It's called Crestmont.
Q Just one final area of inquiry. In making your assessment of how districts are going to function, you don't put much stock, do you, in registration figures, registration of how many Democrats and how many Republicans are registered in particular districts?
A I put some weight to it but not a great deal, no.
Q And the reason for that is --
A Well, because time and time again we have proven that with an aggressive campaign voting behavior can be altered beyond registration percentages.
Q And in fact there are many parts of the state where voting behaviors typically depart from registration. Isn't

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that right?
A That's correct, that's why I testified that there are no safe seats in Pennsylvania aside from three urban ones.
MR. SMITH: Nothing further, Your Honors.
JUDGE NYGAARD: Thank you. Do you have any redirect?
MR. KRILL: Yes, thank you, Your Honors.

REDIRECT EXAMINATION

BY MR. KRILL:
Q On the issue of registration, voter registration, Mr. Hallowell, in your experience do legislators place emphasis on voter registration numbers in their districts?
A More so than I do, yes, that's correct.
Q DO voter registration numbers have an impact on candidate recruitment efforts?
A Yes. Yes, they do. They become a very -- they're a big mental point I think time and time again, and I guess let me start on candidate recruitment or targeting seats. I have had many heated conversations with members of house Republican leadership and state party leadership on, "Well, we don't need to worry about such and such a seat because it's a 70 percent Republican seat." And the answer is, "Yes, we do have to worry about it because there are no safe seats in Pennsylvania. We can't take anything for granted." Likewise we had conversations with regard to targeting seats

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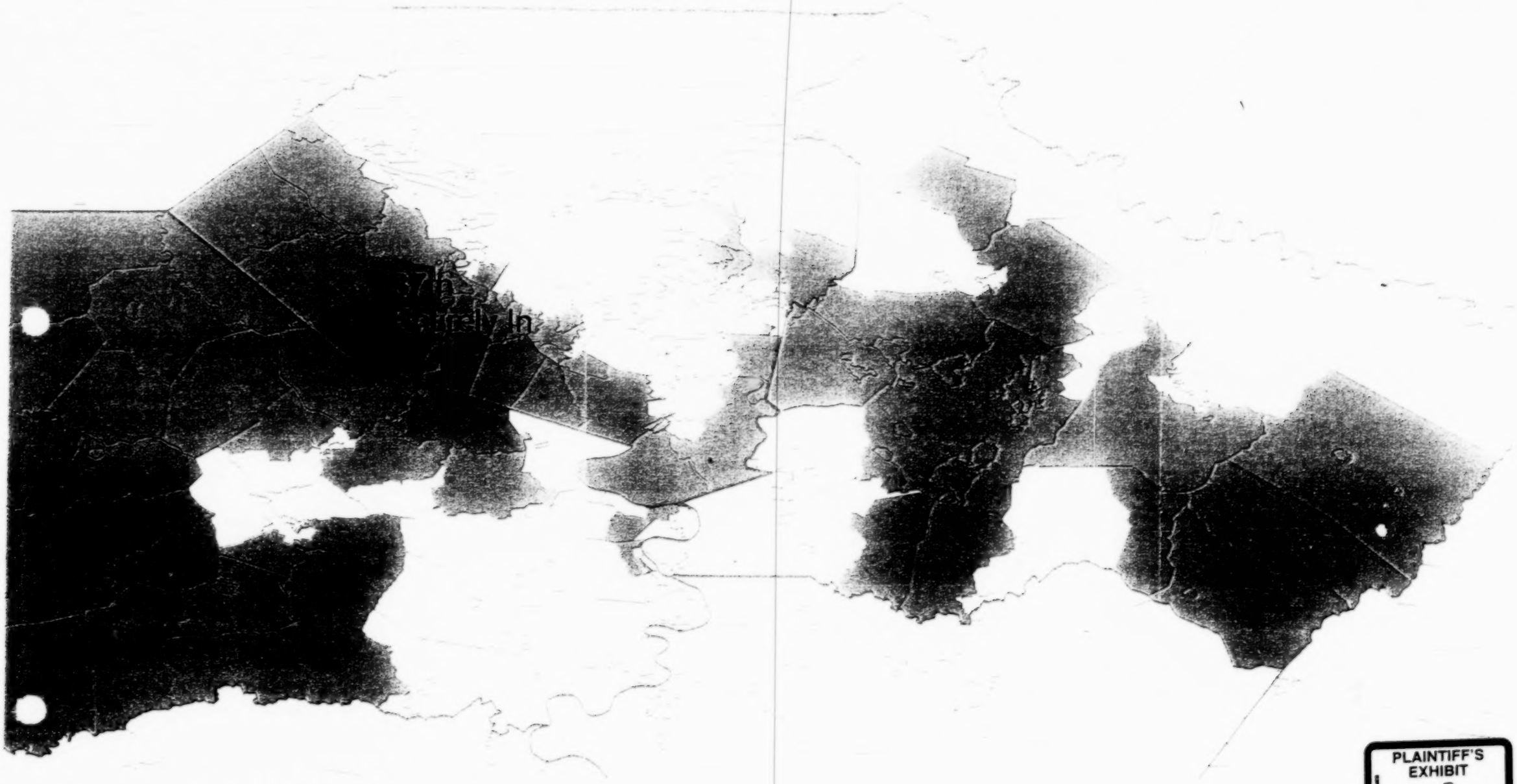
that we shouldn't be in a seat that's a 35 or a 36 or a 37 percent registered Republican seat because we can't win that because there just aren't enough Republicans in it, and we have proven that wrong in Pennsylvania.

Q But you're saying despite that in the minds of legislators voter registration numbers in their districts are still important?
A It's comforting to know, that's the way I view it.
MR. KRILL: No further questions.
JUDGE NYGAARD: Any -- no further questions. Any questions from the Court?
(No audible response.)
JUDGE NYGAARD: Okay, you may step down. Thank you.
THE WITNESS: Thank you.

* * * *

Murphy (37th) Senate District in the 18th Congressional



PLAINTIFF'S
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TABLE 1
INCUMBENT PAIRING & PARTY STRENGTH. 1992 PLAN & CONFERENCE PLAN COMPARED

1992 PLAN	INCUMBENT	% DEM 1991-2000	REP OR DEM DIST	CONF PLAN	INCUMBENT	% DEM 1991-2000	REP OR DEM DIST	CHANGE IN % DEM
DIST 1	BRADY (D)	79.7%	DEM	DIST 1	BRADY (D)	77.3%	DEM	-2.4%
DIST 2	FATTAH (D)	83.0%	DEM	DIST 2	FATTAH (D)	81.7%	DEM	-1.3%
DIST 3	BORSKI (D)	59.5%	DEM	DIST 13	BORSKI (D) HOEFFEL (D)	48.9%	REP	-10.6%
DIST 4	HART (R)	52.0%	DEM	DIST 4	HART (R)	48.6%	REP	-3.4%
DIST 5	PETERSON (R)	41.2%	REP	DIST 5	PETERSON (R)	42.1%	REP	+0.9%
DIST 6	HOLDEN (D)	44.0%	REP	DIST 17	HOLDEN (D) GEKAS (R)	41.7%	REP	-2.3%
DIST 7	WELDON (R)	42.9%	REP	DIST 7	WELDON (R)	43.1%	REP	+0.2%
DIST 8	GREENWOOD (R)	45.6%	REP	DIST 8	GREENWOOD (R)	46.0%	REP	+0.4%
DIST 9	SHUSTER (R)	37.7%	REP	DIST 9	SHUSTER (R)	39.9%	REP	+2.2%
DIST 10	SHERWOOD (R)	46.1%	REP	DIST 10	SHERWOOD (R)	41.5%	REP	-4.6%
DIST 11	KANJORSKI (D)	50.9%	DEM	DIST 11	KANJORSKI (D)	53.5%	DEM	+2.6%
DIST 12	MURTHA (D)	51.9%	DEM	DIST 12	MURTHA (D)	59.5%	DEM	+7.6%
DIST 13	HOEFFEL (D)	46.9%	REP	DIST 13	HOEFFEL (D) BORSKI (D)	48.9%	REP	+2.0%
DIST 14	COYNE (D)	60.0%	DEM	DIST 14	COYNE (D) DOYLE (D)	66.1%	DEM	+6.1%
DIST 15	TOOMEY (R)	47.5%	REP	DIST 15	TOOMEY (R)	47.0%	REP	-0.5%
DIST 16	PITTS (R)	36.5%	REP	DIST 16	PITTS (R)	34.6%	REP	-1.9%
DIST 17	GEKAS (R)	36.9%	REP	DIST 17	GEKAS (R) HOLDEN (D)	41.7%	REP	+4.8%
DIST 18	DOYLE (D)	53.9%	DEM	DIST 14	DOYLE (D) COYNE (D)	66.1%	DEM	+12.2%
DIST 19	PLATTS (R)	38.2%	REP	DIST 19	PLATTS (R)	38.0%	REP	-0.2%
DIST 20	MASCARA (D)	54.4%	DEM	DIST 18	MASCARA (D)	46.8%	REP	-7.6%
DIST 21	ENGLISH (R)	47.7%	REP	DIST 3	ENGLISH (R)	46.4%	REP	-1.3%
				DIST 6	OPEN	44.5%	REP	
SUM		**50.3%**	**12 REP 9 DEM**			**49.8%**	**14 REP 5 DEM**	

TABLE 2

INCUMBENT PAIRING & PARTY STRENGTH, 1992 PLAN & ALTERNATIVE 2 PLAN COMPARED

1992 PLAN	INCUMBENT	% DEM 1991-2000	REP OR DEM DIST	ALT 2 PLAN	INCUMBENT	% DEM 1991-2000	REP OR DEM DIST	CHANGE IN % DEM
DIST 1	BRADY (D)	79.7%	DEM	DIST 1	BRADY (D)	76.8%	DEM	-2.9%
DIST 2	FATTAH (D)	83.0%	DEM	DIST 2	FATTAH (D)	81.8%	DEM	-1.2%
DIST 3	BORSKI (D)	59.5%	DEM	DIST 3	BORSKI (D)	54.3%	DEM	-5.2%
DIST 4	HART (R)	52.0%	DEM	DIST 4	HART (R)	44.3%	REP	-7.7%
DIST 5	PETERSON (R)	41.2%	REP	DIST 5	PETERSON (R)	42.5%	REP	+1.3%
DIST 6	HOLDEN (D)	44.0%	REP	DIST 6	HOLDEN (D)	44.7%	REP	+0.7%
DIST 7	WELDON (R)	42.9%	REP	DIST 7	WELDON (R)	40.7%	REP	-2.2%
DIST 8	GREENWOOD (R)	45.6%	REP	DIST 8	GREENWOOD (R)	39.0%	REP	-6.6%
DIST 9	SHUSTER (R)	37.7%	REP	DIST 19	SHUSTER (R) PLATTS (R)	38.0%	REP	+0.3%
DIST 10	SHERWOOD (R)	46.1%	REP	DIST 10	SHERWOOD (R)	37.6%	REP	-8.5%
DIST 11	KANJORSKI (D)	50.9%	DEM	DIST 11	KANJORSKI (D)	53.8%	DEM	+2.9%
DIST 12	MURTHA (D)	51.9%	DEM	DIST 12	MURTHA (D)	53.8%	DEM	+1.9%
DIST 13	HOEFFEL (D)	46.9%	REP	DIST 13	HOEFFEL (D)	46.3%	REP	-0.6%
DIST 14	COYNE (D)	60.0%	DEM	DIST 18	COYNE (D) DOYLE (D)	61.7%	DEM	+1.7%
DIST 15	TOOMEY (R)	47.5%	REP	DIST 15	TOOMEY (R)	47.7%	REP	+0.2%
DIST 16	PITTS (R)	36.5%	REP	DIST 16	PITTS (R)	34.3%	REP	-2.2%
DIST 17	GEKAS (R)	36.9%	REP	DIST 17	GEKAS (R)	39.7%	REP	+2.8%
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DIST 19	PLATTS (R)	38.2%	REP	DIST 19	PLATTS (R) SHUSTER (R)	38.0%	REP	-0.2%
DIST 20	MASCARA (D)	54.4%	DEM	DIST 14	MASCARA (D)	60.3%	DEM	+5.9%
DIST 21	ENGLISH (R)	47.7%	REP	DIST 9	ENGLISH (R)	49.2%	REP	+1.5%
SUM		**50.3%**	**12 REP 9 DEM**			**49.8%**	**12 REP 7 DEM**	

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TABLE 3
INCUMBENT PAIRING & PARTY STRENGTH. 1992 PLAN & ALTERNATIVE 3 PLAN COMPARED

1992 PLAN	INCUMBENT	% DEM 1991-2000	REP OR DEM DIST	ALT 3 PLAN	INCUMBENT	% DEM 1991-2000	REP OR DEM DIST	CHANGE IN % DEM
DIST 1	BRADY (D)	79.7%	DEM	DIST 1	BRADY (D)	73.7%	DEM	-6.0%
DIST 2	FATTAH (D)	83.0%	DEM	DIST 2	FATTAH (D)	81.5%	DEM	-1.5%
DIST 3	BORSKI (D)	59.5%	DEM	DIST 3	BORSKI (D)	56.8%	DEM	-2.7%
DIST 4	HART (R)	52.0%	DEM	DIST 4	HART (R)	45.6%	REP	-6.4%
DIST 5	PETERSON (R)	41.2%	REP	DIST 5	PETERSON (R)	41.2%	REP	0.0%
DIST 6	HOLDEN (D)	44.0%	REP	DIST 6	HOLDEN (D)	44.5%	REP	+0.5%
DIST 7	WELDON (R)	42.9%	REP	DIST 7	WELDON (R)	42.1%	REP	-0.8%
DIST 8	GREENWOOD (R)	45.6%	REP	DIST 8	GREENWOOD (R)	42.2%	REP	-3.4%
DIST 9	SHUSTER (R)	37.7%	REP	DIST 9	SHUSTER (R)	38.9%	REP	+1.2%
DIST 10	SHERWOOD (R)	46.1%	REP	DIST 10	TOOMEY (R) SHERWOOD (R)	45.9%	REP	-0.2%
DIST 11	KANJORSKI (D)	50.9%	DEM	DIST 11	KANJORSKI (D)	53.7%	DEM	+2.8%
DIST 12	MURTHA (D)	51.9%	DEM	DIST 12	MURTHA (D)	53.9%	DEM	+2.0%
DIST 13	HOEFFEL (D)	46.9%	REP	DIST 13	HOEFFEL (D)	45.5%	REP	-1.4%
DIST 14	COYNE (D)	60.0%	DEM	DIST 18	COYNE (D) DOYLE (D)	64.4%	DEM	+4.4%
DIST 15	TOOMEY (R)	47.5%	REP	DIST 10	TOOMEY (R) SHERWOOD (R)	45.9%	REP	-1.6%
DIST 16	PITTS (R)	36.5%	REP	DIST 16	PITTS (R)	34.5%	REP	-2.0%
DIST 17	GEKAS (R)	36.9%	REP	DIST 17	GEKAS (R)	37.9%	REP	+1.0%
DIST 18	DOYLE (D)	53.9%	DEM	DIST 18	DOYLE (D) COYNE (D)	64.4%	DEM	+10.5%
DIST 19	PLATTS (R)	38.2%	REP	DIST 19	PLATTS (R)	37.9%	REP	-0.3%
DIST 20	MASCARA (D)	54.4%	DEM	DIST 15	MASCARA (D)	56.7%	DEM	+2.3%
DIST 21	ENGLISH (R)	47.7%	REP	DIST 14	ENGLISH (R)	48.4%	REP	+0.7%
SUM		**50.3%**	**12 REP 9 DEM**			**49.8%**	**12 REP 7 DEM**	

TABLE 4
INCUMBENT PAIRING & PARTY STRENGTH, 1992 PLAN & ALTERNATIVE 4 PLAN COMPARED

1992 PLAN	INCUMBENT	% DEM 1991-2000	REP OR DEM DIST	ALT 4 PLAN	INCUMBENT	% DEM 1991-2000	REP OR DEM DIST	CHANGE IN % DEM
DIST 1	BRADY (D)	79.7%	DEM	DIST 1	BRADY (D)	75.8%	DEM	-3.9%
DIST 2	FATTAH (D)	83.0%	DEM	DIST 2	FATTAH (D)	82.1%	DEM	-0.9%
DIST 3	BORSKI (D)	59.5%	DEM	DIST 3	BORSKI (D)	55.0%	DEM	-4.5%
DIST 4	HART (R)	52.0%	DEM	DIST 4	HART (R)	45.1%	REP	-6.9%
DIST 5	PETERSON (R)	41.2%	REP	DIST 5	PETERSON (R)	42.5%	REP	+1.3%
DIST 6	HOLDEN (D)	44.0%	REP	DIST 6	HOLDEN (D)	44.6%	REP	+0.6%
DIST 7	WELDON (R)	42.9%	REP	DIST 7	WELDON (R)	40.8%	REP	-2.1%
DIST 8	GREENWOOD (R)	45.6%	REP	DIST 8	GREENWOOD (R)	39.4%	REP	-6.2%
DIST 9	SHUSTER (R)	37.7%	REP	DIST 19	SHUSTER (R) PLATTS (R)	38.1%	REP	+0.4%
DIST 10	SHERWOOD (R)	46.1%	REP	DIST 10	SHERWOOD (R)	37.9%	REP	-8.2%
DIST 11	KANJORSKI (D)	50.9%	DEM	DIST 11	KANJORSKI (D)	53.7%	DEM	+2.8%
DIST 12	MURTHA (D)	51.9%	DEM	DIST 12	MURTHA (D)	52.7%	DEM	+0.8%
DIST 13	HOEFFEL (D)	46.9%	REP	DIST 13	HOEFFEL (D)	46.0%	REP	-0.9%
DIST 14	COYNE (D)	60.0%	DEM	DIST 18	COYNE (D) DOYLE (D)	65.1%	DEM	+5.1%
DIST 15	TOOMEY (R)	47.5%	REP	DIST 15	TOOMEY (R)	47.7%	REP	+0.2%
DIST 16	PITTS (R)	36.5%	REP	DIST 16	PITTS (R)	34.4%	REP	-2.1%
DIST 17	GEKAS (R)	36.9%	REP	DIST 17	GEKAS (R)	39.5%	REP	-2.6%
DIST 18	DOYLE (D)	53.9%	DEM	DIST 18	DOYLE (D) COYNE (D)	65.1%	DEM	+11.2%
DIST 19	PLATTS (R)	38.2%	REP	DIST 19	PLATTS (R) SHUSTER (R)	38.1%	REP	-0.1%
DIST 20	MASCARA (D)	54.4%	DEM	DIST 14	MASCARA (D)	56.7%	DEM	-2.3%
DIST 21	ENGLISH (R)	47.7%	REP	DIST 9	ENGLISH (R)	49.7%	REP	-2.0%
SUM		**50.3%**	**12 REP 9 DEM**			**49.8%**	**12 REP 7 DEM**	

TABLE 5
SUMMARY OF TABLES 1-4: REPUBLICAN AND DEMOCRATIC DISTRICTS & PAIRINGS IN EACH PLAN

	MEAN % DEM	MEAN % REP	# OF DEM DISTRICTS	% OF DISTRICTS	# OF REP DISTRICTS	% OF REP DISTRICTS	PAIRINGS
1992 PLAN	50.3%	49.7%	9	43%	12	57%	NA
CONF PLAN	49.8%	50.2%	5	26%	14	74%	2 D/DIST 13 2D/DIST 14 1D,1R/DIST 17*
ALT 2 PLAN	49.8%	50.2%	7	37%	12	63%	2D/DIST 18 2R/DIST 19
ALT 3 PLAN	49.8%	50.2%	7	37%	12	63%	2D/DIST 18 2R/DIST 10
ALT 4 PLAN	49.8%	50.2%	7	37%	12	63%	2D/DIST 18 2R/DIST 19

* DISTRICT 17 IS A HEAVILY REPUBLICAN LEANING DISTRICT

TABLE 6
COMPARISON OF PLANS ON COMPACTNESS, DISPERSION & PERIMETER MEASURES

DIST	1992 PLAN		CONF PLAN		ALT 2 PLAN		ALT 3 PLAN		ALT 4 PLAN	
	DISP	PERI	DISP	PERI	DISP	PERI	DISP	PERI	DISP	PERI
1	.167	.092	.140	.068	.149	.065	.166	.084	.165	.094
2	.433	.178	.432	.165	.434	.170	.476	.274	.486	.225
3	.307	.302	.410	.142	.340	.286	.244	.256	.269	.248
4	.270	.207	.301	.252	.402	.136	.392	.176	.396	.115
5	.322	.237	.381	.227	.400	.173	.237	.205	.400	.173
6	.275	.213	.338	.090	.409	.360	.355	.390	.418	.244
7	.426	.203	.507	.172	.172	.110	.529	.289	.186	.127
8	.343	.431	.340	.319	.317	.206	.252	.208	.290	.167
9	.428	.255	.271	.126	.404	.223	.268	.151	.329	.223
10	.318	.305	.315	.182	.284	.118	.332	.200	.274	.114
11	.306	.285	.283	.243	.347	.245	.393	.262	.340	.198
12	.461	.237	.218	.053	.363	.137	.406	.243	.349	.129
13	.317	.236	.187	.104	.386	.294	.275	.218	.455	.285
14	.461	.139	.312	.098	.402	.195	.392	.342	.456	.153
15	.360	.342	.332	.222	.437	.350	.421	.161	.263	.260
16	.495	.279	.332	.221	.370	.198	.374	.343	.382	.170
17	.358	.223	.313	.301	.376	.226	.280	.221	.490	.331
18	.538	.127	.228	.063	.340	.109	.458	.201	.294	.123
19	.312	.357	.321	.388	.196	.144	.385	.422	.193	.132
20	.414	.216								
21	.432	.275								
MIN	**.167**	**.092**	**.140**	**.053**	**.149**	**.065**	**.166**	**.084**	**.165**	**.094**
MEAN	**.369**	**.245**	**.314**	**.181**	**.344**	**.197**	**.349**	**.245**	**.339**	**.185**

TABLE 7
COMPARISON OF PLANS, COMPACTNESS MEASURES, COUNTY SPLITS, MUNICIPAL SPLITS, PRECINCT SPLITS, POPULATION DEVIATION

	1992 PLAN	RANK	CONF PLAN	RANK	ALT 2 PLAN	RANK	ALT 3 PLAN	RANK	ALT 4 PLAN	RANK
COMPACTNESS DISPERSION MEAN SCORE	.369	1	.314	5	.344	3	.349	2	.339	4
COMPACTNESS PERIMETER MEAN SCORE	.245	1.5	.181	5	.197	3	.245	1.5	.185	4
NUMBER OF COUNTY SPLITS	18	1	25	4.5	23	2.5	23	2.5	25	4.5
NUMBER OF MUNICIPAL SPLITS	13	1	65	5	18	2	21	3	42	4
NUMBER OF PRECINCT SPLITS	3	4	6	5	0	2	0	2	0	2
TOTAL POPULATION DEVIATION	57	5	19	3.5	15	2	19	3.5	1	1
MEAN RANK		**2.3**		**4.7**		**2.4**		**2.4**		**3.3**

TABLE 8
PERCENT OF PERSONS FROM 1992 DISTRICTS IN NEW DISTRICTS, BY PLAN & PARTY OF INCUMBENT

		REPUBLICAN INCUMBENTS PERCENT CONSTITUENTS RETAINED		DEMOCRATIC INCUMBENTS PERCENT CONSTITUENTS RETAINED
CONF PLAN		76%		51%
ALT 2 PLAN		54%		61%
ALT 3 PLAN		60%		66%
ALT 4 PLAN		55%		63%

TABLE 9
INTER-YEAR LINEAR CORRELATIONS BETWEEN % DEMOCRATIC IN STATEWIDE ELECTIONS FROM 1992 TO 2000 *

		MEAN % DEM00	MEAN % DEM98	MEAN % DEM96	MEAN % DEM94	MEAN % DEM92
MEAN % DEM00		1.0	.931	.966	.942	.924
MEAN % DEM98		.931	1.0	.936	.935	.934
MEAN % DEM96		.966	.936	1.0	.960	.937
MEAN % DEM94		.942	.935	.960	1.0	.942
MEAN % DEM92		.924	.934	.937	.942	1.0

* PRECINCT-LEVEL DATA

TABLE 10
LINEAR CORRELATIONS BETWEEN MEAN % DEMOCRATIC IN STATEWIDE ELECTIONS AND % DEMOCRATIC IN CONGRESSIONAL ELECTIONS, 1992-2000 *

	% DEM 1992 CONGRESS WITH MEAN % DEM 1992 STATEWIDE ELECTIONS	% DEM 1994 CONGRESS WITH MEAN % DEM 1994 STATEWIDE ELECTIONS	% DEM 1996 CONGRESS WITH MEAN % DEM 1996 STATEWIDE ELECTIONS	% DEM 1998 CONGRESS WITH MEAN % DEM 1998 STATEWIDE ELECTIONS	% DEM 2000 CONGRESS WITH MEAN % DEM 2000 STATEWIDE ELECTIONS
LINEAR CORRE-LATION COEFF.	.827	.857	.872	.854	.827

* UNCONTESTED ELECTIONS ELIMINATED; PRECINCT-LEVEL DATA

TABLE 11
PREDICTED CHANGE IN % DEMOCRAT IN CONGRESSIONAL ELECTIONS FOR A 1 % CHANGE IN MEAN % DEMOCRAT IN STATEWIDE ELECTIONS, 1992-2000 *

	% DEM 1992 CONGRESS WITH MEAN % DEM 1992 STATEWIDE ELECTIONS	% DEM 1994 CONGRESS WITH MEAN % DEM 1994 STATEWIDE ELECTIONS	% DEM 1996 CONGRESS WITH MEAN % DEM 1996 STATEWIDE ELECTIONS	% DEM 1998 CONGRESS WITH MEAN % DEM 1998 STATEWIDE ELECTIONS	% DEM 2000 CONGRESS WITH MEAN % DEM 2000 STATEWIDE ELECTIONS
PREDICTED CHANGE IN % DEM CONGRESS FOR 1% CHANGE IN MEAN % DEM STATEWIDE ELECTIONS	1.1%	.94%	1.1%	.98%	1.0%
STATIS-ICAL SIGNIF-CANCE	<.0001	<.0001	<.0001	<.0001	<.0001

* UNCONTESTED ELECTIONS ELIMINATED; PRECINCT-LEVEL DATA

TABLE 12
PERCENT OF PERSONS FROM 1992 DISTRICT IN NEW DISTRICTS, BY PLAN AND PARTY, INDIVIDUAL DISTRICTS, CONFERENCE PLAN

1992 PLAN	INCUMBENT	CONF PLAN	INCUMBENT	PERCENT CONSTITUENTS RETAINED
DIST 1	BRADY (D)	DIST 1	BRADY (D)	54.6%
DIST 2	FATTAH (D)	DIST 2	FATTAH (D)	64.4%
DIST 3	BORSKI (D)	DIST 13	BORSKI (D) HOEFFEL (D)	47.3%
DIST 4	HART (R)	DIST 4	HART (R)	68.1%
DIST 5	PETERSON (R)	DIST 5	PETERSON (R)	75.8%
DIST 6	HOLDEN (D)	DIST 17	HOLDEN (D) GEKAS (R)	39.1%
DIST 7	WELDON (R)	DIST 7	WELDON (R)	77.5%
DIST 8	GREENWOOD (R)	DIST 8	GREENWOOD (R)	92.5%
DIST 9	SHUSTER (R)	DIST 9	SHUSTER (R)	65.3%
DIST 10	SHERWOOD (R)	DIST 10	SHERWOOD (R)	60.4%
DIST 11	KANJORSKI (D)	DIST 11	KANJORSKI (D)	70.1%
DIST 12	MURTHA (D)	DIST 12	MURTHA (D)	49.1%
DIST 13	HOEFFEL (D)	DIST 13	HOEFFEL (D) BORSKI (D)	46.9%
DIST 14	COYNE (D)	DIST 14	COYNE (D) DOYLE (D)	60.7%
DIST 15	TOOMEY (R)	DIST 15	TOOMEY (R)	93.0%
DIST 16	PITTS (R)	DIST 16	PITTS (R)	67.4%
DIST 17	GEKAS (R)	DIST 17	GEKAS (R) HOLDEN (D)	60.4%
DIST 18	DOYLE (D)	DIST 14	DOYLE (D) COYNE (D)	38.4%
DIST 19	PLATTS (R)	DIST 19	PLATTS (R)	91.7%
DIST 20	MASCARA (D)	DIST 18	MASCARA (D)	44.1%
DIST 21	ENGLISH (R)	DIST 3	ENGLISH (R)	87.5%
		DIST 6	OPEN	
MEAN				**64%**
MEAN DEM INC				**51%**
MEAN REP INC				**76%**

U. S. Congressional Districts 2002 - Act 1 (2002) - Election Results

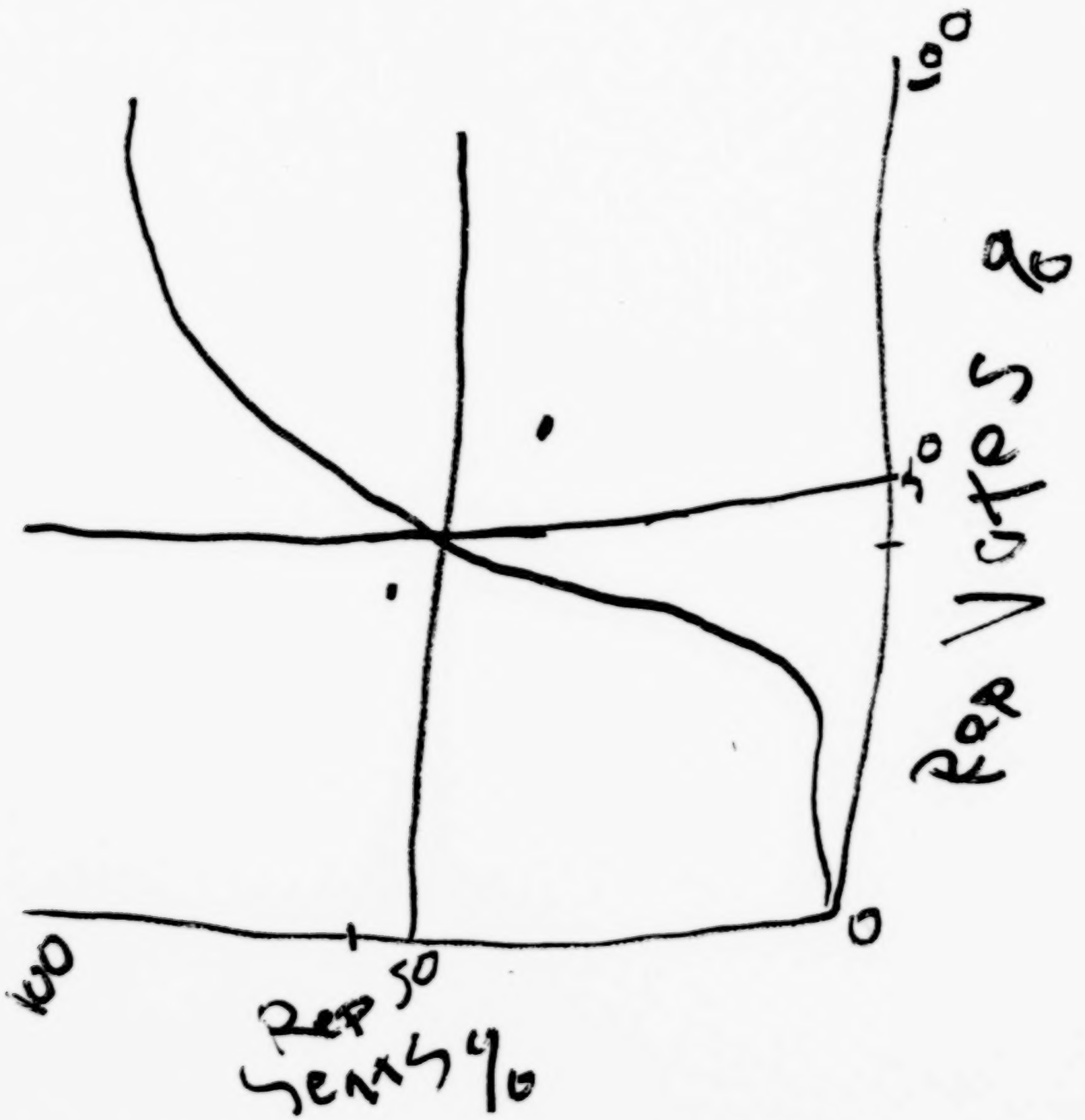
District	Dem_Str	President 2000			President 1996			Governor 1994			President 1992		
		Bush	Gore	Other	Dole	Clinton	Other	Ridge	Singel	Other	Bush	Clinton	Other
1	81.98%	31,717	182,154	4,055	28,921	167,499	13,261	39,148	108,122	10,621	51,225	173,368	26,920
2	85.75%	29,295	221,013	4,554	27,062	206,171	10,086	29,752	137,180	10,016	41,874	215,743	20,858
3	46.08%	128,404	117,241	8,623	99,249	112,943	28,086	124,480	51,940	28,834	91,402	112,745	55,695
4	47.59%	152,314	134,704	7,518	122,251	120,680	26,821	98,658	79,611	42,952	101,286	132,230	58,171
5	41.66%	137,675	89,122	8,040	102,219	90,344	30,310	98,810	57,144	25,748	98,602	88,144	54,517
6	45.37%	128,820	130,377	8,057	102,687	104,900	25,537	88,695	61,039	26,783	101,887	99,654	51,882
7	44.94%	141,774	151,267	8,870	119,507	126,392	31,141	109,493	68,912	35,659	133,273	120,262	56,806
8	46.92%	130,554	145,213	9,130	102,040	113,103	31,472	94,652	60,711	26,369	103,353	107,598	60,287
9	39.07%	149,317	80,116	5,596	110,029	80,791	25,473	90,318	58,969	28,968	103,957	78,768	44,467
10	42.67%	140,271	100,880	9,215	104,911	89,309	30,419	97,658	62,329	20,667	108,266	81,683	51,706
11	56.19%	101,451	127,241	9,665	79,027	112,550	28,788	73,025	81,468	18,895	87,542	106,174	47,244
12	59.40%	106,349	132,886	7,266	77,796	127,798	31,081	64,058	109,206	32,839	69,296	146,654	50,118
13	51.39%	117,806	156,203	7,482	96,132	128,290	27,914	95,429	78,074	30,706	108,887	127,744	52,116
14	67.38%	74,091	183,711	9,266	66,151	163,254	24,528	64,141	115,343	31,233	64,649	191,562	46,717
15	47.16%	116,612	119,296	9,117	91,172	99,922	26,851	83,791	58,672	17,309	85,852	95,119	51,126
16	34.79%	144,667	82,651	6,355	115,220	71,772	18,885	85,057	39,772	32,654	108,644	64,970	38,168
17	42.63%	139,499	103,922	7,761	109,736	94,982	26,858	93,034	66,260	33,566	111,313	86,094	50,603
18	45.68%	154,172	139,441	7,557	126,100	117,674	28,292	105,678	79,906	39,547	103,618	127,125	63,254
19	37.96%	153,693	90,045	7,531	117,551	84,625	22,106	89,523	54,242	33,627	110,090	78,199	46,319
	Tot:	**2,278,481**	**2,487,483**	**145,658**	**1,797,761**	**2,212,999**	**487,909**	**1,625,400**	**1,428,900**	**526,993**	**1,785,016**	**2,233,836**	**926,974**
	Offic'l Tot:	**2,281,127**	**2,485,967**		**1,801,169**	**2,215,819**		**1,627,976**	**1,430,099**		**1,791,841**	**2,239,164**	
	Variance fr. Offic'l:	**(2,646)**	**1,516**		**(3,408)**	**(2,820)**		**(2,576)**	**(1,199)**		**(6,825)**	**(5,328)**	
1		14.55%	83.59%	1.86%	13.79%	79.88%	6.32%	24.79%	68.48%	6.73%	20.37%	68.93%	10.70%
2		11.49%	86.72%	1.79%	11.12%	84.73%	4.15%	16.81%	77.53%	5.66%	15.04%	77.47%	7.49%
3		50.50%	46.11%	3.39%	41.31%	47.01%	11.69%	60.65%	25.31%	14.05%	35.18%	43.39%	21.43%
4		51.71%	45.73%	2.55%	45.32%	44.74%	9.94%	44.60%	35.99%	19.42%	34.72%	45.33%	19.94%
5		58.63%	37.95%	3.42%	45.86%	40.54%	13.60%	54.38%	31.45%	14.17%	40.87%	36.53%	22.60%
6		48.20%	48.78%	3.01%	44.05%	45.00%	10.95%	50.25%	34.58%	15.17%	40.20%	39.32%	20.47%
7		46.96%	50.10%	2.94%	43.14%	45.62%	11.24%	51.15%	32.19%	16.66%	42.94%	38.75%	18.30%
8		45.82%	50.97%	3.20%	41.38%	45.86%	12.76%	52.08%	33.41%	14.51%	38.10%	39.67%	22.23%
9		63.53%	34.09%	2.38%	50.87%	37.35%	11.78%	50.67%	33.08%	16.25%	45.76%	34.67%	19.57%
10		56.03%	40.29%	3.68%	46.70%	39.76%	13.54%	54.06%	34.50%	11.44%	44.80%	33.80%	21.40%
11		42.56%	53.38%	4.05%	35.86%	51.07%	13.06%	42.12%	46.99%	10.90%	36.33%	44.06%	19.61%
12		43.14%	53.91%	2.95%	32.87%	54.00%	13.13%	31.08%	52.99%	15.93%	26.04%	55.12%	18.84%
13		41.85%	55.49%	2.66%	38.10%	50.84%	11.06%	46.73%	38.23%	15.04%	37.71%	44.24%	18.05%
14		27.74%	68.79%	3.47%	26.05%	64.29%	9.66%	30.44%	54.74%	14.82%	21.34%	63.24%	15.42%
15		47.59%	48.69%	3.72%	41.83%	45.85%	12.32%	52.44%	36.72%	10.83%	36.99%	40.98%	22.03%
16		61.91%	35.37%	2.72%	55.97%	34.86%	9.17%	54.01%	25.25%	20.73%	51.30%	30.68%	18.02%
17		55.54%	41.37%	3.09%	47.39%	41.02%	11.60%	48.24%	34.36%	17.40%	44.88%	34.71%	20.40%
18		51.19%	46.30%	2.51%	46.35%	43.25%	10.40%	46.94%	35.49%	17.57%	35.24%	43.24%	21.52%
19		61.17%	35.84%	3.00%	52.41%	37.73%	9.86%	50.47%	30.58%	18.96%	46.93%	33.33%	19.74%

U. S. Congressional Districts 2002 - Act 1 (2002) - Election Results

District	Voter Registration 2000			US Senate 2000		Attorney Gen 2000		Auditor Gen 2000		Treasurer 2000	
	Republican	Democratic	Other	Santorum	Klink	Fisher	Eisenhowr	True	Casey	Hafer	Knoll
1	83,648	314,419	26,967	38,357	163,741	33,065	162,677	24,827	174,999	34,152	163,630
2	62,564	360,599	35,312	36,174	200,635	31,817	199,211	23,750	209,927	34,886	197,445
3	171,435	182,454	35,263	139,345	100,443	142,974	88,267	95,481	135,142	117,477	116,131
4	168,115	225,631	42,353	155,708	132,956	165,262	109,264	118,117	157,378	148,287	131,241
5	190,842	145,735	38,481	145,686	75,344	142,000	72,375	110,292	104,709	128,507	87,577
6	209,105	150,634	59,605	149,990	104,120	142,915	104,023	110,729	136,329	139,428	107,042
7	279,835	119,762	51,547	170,507	116,542	162,543	115,506	129,794	150,495	157,733	119,746
8	208,392	160,289	58,791	155,440	112,853	142,202	116,733	116,470	144,823	140,510	118,892
9	190,087	137,561	31,714	152,469	73,037	156,602	65,578	121,741	100,803	141,601	80,812
10	198,012	147,823	34,520	151,389	81,154	151,066	73,274	112,682	114,929	136,286	89,782
11	135,536	217,168	35,389	111,666	105,001	110,665	94,907	71,227	140,645	94,324	112,830
12	108,110	259,972	27,538	107,258	129,496	114,667	114,665	75,758	153,146	97,173	134,854
13	209,502	187,967	40,882	141,063	122,773	132,114	122,431	100,671	156,610	127,881	126,917
14	78,425	335,453	39,235	79,607	171,757	92,074	145,896	55,123	180,759	86,700	158,881
15	164,599	174,188	53,273	132,702	95,574	121,305	97,589	93,085	128,331	117,840	102,710
16	214,334	106,083	52,213	153,163	69,694	154,237	63,877	141,706	80,295	142,672	74,514
17	203,089	141,621	39,443	147,078	90,459	155,250	78,838	115,163	121,457	149,576	86,115
18	167,486	242,122	42,457	157,937	130,741	177,647	100,782	117,483	156,150	154,667	127,473
19	207,675	126,830	49,318	156,705	80,358	167,188	65,873	128,637	108,111	158,628	75,211
	3,250,791	**3,736,311**	**794,301**	**2,482,244**	**2,156,678**	**2,495,593**	**1,991,766**	**1,862,736**	**2,655,038**	**2,308,328**	**2,211,803**
Offic'l	**3,250,764**	**3,736,304**		**2,481,962**	**2,154,908**	**2,495,253**	**1,991,144**	**1,862,934**	**2,651,551**	**2,307,422**	**2,211,471**
Variance	**27**	**7**		**282**	**1,770**	**340**	**622**	(198)	**3,487**	**906**	**332**
1	19.68%	73.98%	6.34%	18.98%	81.02%	16.89%	83.11%	12.42%	87.58%	17.27%	82.73%
2	13.65%	78.65%	7.70%	15.28%	84.72%	13.77%	86.23%	10.16%	89.84%	15.02%	84.98%
3	44.05%	46.89%	9.06%	58.11%	41.89%	61.83%	38.17%	41.40%	58.60%	50.29%	49.71%
4	38.55%	51.74%	9.71%	53.94%	46.06%	60.20%	39.80%	42.87%	57.13%	53.05%	46.95%
5	50.88%	38.86%	10.26%	65.91%	34.09%	66.24%	33.76%	51.30%	48.70%	59.47%	40.53%
6	49.86%	35.92%	14.21%	59.03%	40.97%	57.87%	42.13%	44.82%	55.18%	56.57%	43.43%
7	62.03%	26.55%	11.43%	59.40%	40.60%	58.46%	41.54%	46.31%	53.69%	56.85%	43.15%
8	48.75%	37.50%	13.75%	57.94%	42.06%	54.92%	45.08%	44.57%	55.43%	54.17%	45.83%
9	52.90%	38.28%	8.83%	67.61%	32.39%	70.48%	29.52%	54.70%	45.30%	63.67%	36.33%
10	52.06%	38.86%	9.08%	65.10%	34.90%	67.34%	32.66%	49.51%	50.49%	60.29%	39.71%
11	34.92%	55.96%	9.12%	51.54%	48.46%	53.83%	46.17%	33.62%	66.38%	45.53%	54.47%
12	27.33%	65.71%	6.96%	45.30%	54.70%	50.00%	50.00%	33.10%	66.90%	41.88%	58.12%
13	47.79%	42.88%	9.33%	53.47%	46.53%	51.90%	48.10%	39.13%	60.87%	50.19%	49.81%
14	17.31%	74.03%	8.66%	31.67%	68.33%	38.69%	61.31%	23.37%	76.63%	35.30%	64.70%
15	41.98%	44.43%	13.59%	58.13%	41.87%	55.42%	44.58%	42.04%	57.96%	53.43%	46.57%
16	57.52%	28.47%	14.01%	68.73%	31.27%	70.71%	29.29%	63.83%	36.17%	65.69%	34.31%
17	52.87%	36.87%	10.27%	61.92%	38.08%	66.32%	33.68%	48.67%	51.33%	63.46%	36.54%
18	37.05%	53.56%	9.39%	54.71%	45.29%	63.80%	36.20%	42.93%	57.07%	54.82%	45.18%
19	54.11%	33.04%	12.85%	66.10%	33.90%	71.74%	28.26%	54.33%	45.67%	67.84%	32.16%

District	Governor 1998			U S Senate 1998		Attorney Gen 1996		Auditor Gen 1996		Treasurer 1996		U S Senate 1994	
	Ridge	Itkin	Other	Specter	Lloyd	Fisher	Kohn	Nyce	Casey	Hafer	Knoll	Santorum	Wofford
1	36,787	74,134	4,880	39,736	72,646	32,699	156,559	28,546	158,088	39,518	147,894	34,419	115,819
2	36,876	98,402	6,087	45,022	92,580	29,950	192,369	30,340	188,181	41,258	180,059	26,446	145,280
3	98,937	40,912	28,726	99,231	54,335	119,952	98,398	97,571	117,559	116,553	95,773	108,732	83,002
4	99,866	57,032	32,174	116,568	61,684	139,235	113,969	107,860	141,433	132,329	111,192	118,204	96,144
5	97,547	36,205	21,230	101,182	45,421	125,060	80,816	89,602	114,675	111,855	86,982	104,652	67,552
6	96,723	42,505	15,702	103,656	43,269	118,528	97,999	109,284	101,963	127,862	82,283	94,609	71,674
7	120,883	44,814	18,292	125,291	47,867	141,242	110,952	129,770	118,969	149,590	95,704	114,200	85,634
8	101,859	43,235	12,767	100,051	46,589	119,436	103,489	109,622	110,114	124,815	92,471	92,111	73,205
9	97,823	33,132	21,712	97,228	49,403	130,010	74,027	95,768	107,518	114,889	80,712	102,955	66,061
10	112,093	42,391	14,110	113,694	46,049	120,088	80,920	87,321	118,252	104,916	90,276	100,881	69,372
11	85,726	53,540	12,794	85,957	53,581	86,413	104,279	64,969	134,544	76,475	110,094	74,301	88,394
12	73,057	61,223	30,434	81,709	74,835	93,208	125,149	66,714	149,501	89,703	121,901	80,466	115,063
13	107,842	50,387	15,664	112,718	51,127	111,036	117,150	100,834	122,248	121,989	99,167	94,904	94,118
14	64,421	75,192	21,495	76,733	71,259	82,718	145,985	58,503	163,422	88,056	137,056	70,845	132,707
15	102,566	45,871	8,772	98,370	47,610	99,492	92,626	103,279	90,350	108,356	81,597	81,679	69,173
16	93,286	24,159	15,399	91,207	30,357	127,984	63,411	106,907	80,244	112,937	68,198	100,353	45,895
17	106,734	36,746	18,852	110,251	44,333	127,381	88,647	99,638	115,235	118,656	88,550	105,666	74,121
18	94,133	53,496	35,035	112,960	56,342	151,131	102,243	113,658	132,375	139,481	105,463	123,684	92,161
19	109,203	27,710	14,513	102,720	38,884	132,050	75,264	106310	101,354	121,331	76,958	103,951	61,359
	1,736,362	**941,086**	**348,638**	**1,814,284**	**1,028,171**	**2,087,613**	**2,024,252**	**1,706,496**	**2,366,025**	**2,040,569**	**1,952,330**	**1,733,058**	**1,646,734**
Offic'l	**1,736,844**	**938,745**		**1,814,180**	**1,028,839**	**2,088,163**	**2,026,161**	**1,706,835**	**2,367,760**	**2,041,081**	**1,952,613**	**1,735,691**	**1,648,481**
Variance	(482)	2,341	348,638	104	(668)	(550)	(1,909)	(339)	(1,735)	(512)	(283)	(2,633)	(1,747)
1	31.77%	64.02%	4.21%	35.36%	64.64%	17.28%	82.72%	15.30%	84.70%	21.09%	78.91%	22.91%	77.09%
2	26.09%	69.61%	4.31%	32.72%	67.28%	13.47%	86.53%	13.88%	86.12%	18.64%	81.36%	15.40%	84.60%
3	58.69%	24.27%	17.04%	64.62%	35.38%	54.94%	45.06%	45.35%	54.65%	54.89%	45.11%	56.71%	43.29%
4	52.82%	30.16%	17.02%	65.40%	34.60%	54.99%	45.01%	43.27%	56.73%	54.34%	45.66%	55.15%	44.85%
5	62.94%	23.36%	13.70%	69.02%	30.98%	60.75%	39.25%	43.86%	56.14%	56.25%	43.75%	60.77%	39.23%
6	62.43%	27.43%	10.13%	70.55%	29.45%	54.74%	45.26%	51.73%	48.27%	60.84%	39.16%	56.90%	43.10%
7	65.70%	24.36%	9.94%	72.36%	27.64%	56.01%	43.99%	52.17%	47.83%	60.98%	39.02%	57.15%	42.85%
8	64.52%	27.39%	8.09%	68.23%	31.77%	53.58%	46.42%	49.89%	50.11%	57.44%	42.56%	55.72%	44.28%
9	64.08%	21.70%	14.22%	66.31%	33.69%	63.72%	36.28%	47.11%	52.89%	58.74%	41.26%	60.91%	39.09%
10	66.49%	25.14%	8.37%	71.17%	28.83%	59.74%	40.26%	42.48%	57.52%	53.75%	46.25%	59.25%	40.75%
11	56.38%	35.21%	8.41%	61.60%	38.40%	45.32%	54.68%	32.56%	67.44%	40.99%	59.01%	45.67%	54.33%
12	44.35%	37.17%	18.48%	52.20%	47.80%	42.69%	57.31%	30.86%	69.14%	42.39%	57.61%	41.15%	58.85%
13	62.02%	28.98%	9.01%	68.80%	31.20%	48.66%	51.34%	45.20%	54.80%	55.16%	44.84%	50.21%	49.79%
14	39.99%	46.67%	13.34%	51.85%	48.15%	36.17%	63.83%	26.36%	73.64%	39.12%	60.88%	34.80%	65.20%
15	65.24%	29.18%	5.58%	67.39%	32.61%	51.79%	48.21%	53.34%	46.66%	57.04%	42.96%	54.15%	45.85%
16	70.22%	18.19%	11.59%	75.03%	24.97%	66.87%	33.13%	57.12%	42.88%	62.35%	37.65%	68.62%	31.38%
17	65.75%	22.64%	11.61%	71.32%	28.68%	58.97%	41.03%	46.37%	53.63%	57.26%	42.74%	58.77%	41.23%
18	51.53%	29.29%	19.18%	66.72%	33.28%	59.65%	40.35%	46.20%	53.80%	56.94%	43.06%	57.30%	42.70%
19	72.12%	18.30%	9.58%	72.54%	27.46%	63.70%	36.30%	51.19%	48.81%	61.19%	38.81%	62.88%	37.12%

District	U S Senate 1992		Attorney Gen 1992		Auditor Gen 1992		Treasurer 1992		U S Senate 1991	
	Specter	Yeakel	Preate	Kohn	Hafer	Lewis	Henry	Knoll	Thornburgh	Wofford
1	90,692	146,791	64,451	153,692	62,822	151,644	41,784	168,346	44,609	128,904
2	90,025	176,326	57,224	188,732	56,787	183,905	35,434	200,811	34,670	154,114
3	117,509	115,000	129,640	104,312	138,267	91,696	74,894	153,066	84,816	97,413
4	141,710	129,068	130,076	142,205	147,133	123,187	77,924	189,867	89,924	116,724
5	115,186	103,954	127,138	95,996	137,663	82,334	82,825	136,767	93,050	79,794
6	127,235	108,819	128,887	104,615	135,794	90,793	96,423	130,233	81,677	74,082
7	164,637	125,446	169,759	112,387	166,071	108,859	135,228	137,212	104,866	99,419
8	133,891	118,950	135,136	107,178	125,625	112,813	102,644	129,174	80,451	84,912
9	119,137	88,189	124,534	89,453	132,556	78,217	84,396	128,088	92,267	73,793
10	122,933	98,599	152,699	70,881	129,607	85,938	93,659	124,869	93,023	82,886
11	110,020	114,136	139,130	81,690	102,521	105,612	63,493	136,715	69,898	107,451
12	113,780	134,685	99,139	149,393	109,814	136,584	51,032	194,067	68,104	133,235
13	154,721	114,028	140,983	114,712	133,566	113,464	100,703	141,216	92,539	112,041
14	122,935	158,072	90,679	180,234	108,764	160,721	42,153	222,981	60,575	150,519
15	105,303	109,268	106,931	98,559	110,054	90,738	76,250	121,138	69,523	74,846
16	111,674	74,210	122,066	71,923	117,403	64,338	103,675	85,725	82,710	44,099
17	134,109	96,089	139,763	91,871	138,039	88,935	93,300	133,958	94,286	78,352
18	153,347	119,636	130,502	140,081	150,065	118,886	80,124	184,430	97,026	107,398
19	124,608	90,243	128,411	87,195	133,920	78,033	95,883	113,837	87,558	61,706
	2,353,452	**2,221,509**	**2,317,148**	**2,185,109**	**2,336,471**	**2,066,697**	**1,531,824**	**2,832,500**	**1,521,572**	**1,861,688**
Offic'l	**2,358,125**	**2,224,966**	**2,313,397**	**2,187,792**	**2,340,915**	**2,068,629**	**1,532,527**	**2,832,031**	**1,521,986**	**1,860,760**
Variance	(4,673)	(3,457)	**3,751**	(2,683)	(4,444)	(1,932)	(703)	**469**	(414)	**928**
1	38.19%	61.81%	29.55%	70.45%	29.29%	70.71%	19.88%	80.12%	25.71%	74.29%
2	33.80%	66.20%	23.27%	76.73%	23.59%	76.41%	15.00%	85.00%	18.36%	81.64%
3	50.54%	49.46%	55.41%	44.59%	60.13%	39.87%	32.85%	67.15%	46.54%	53.46%
4	52.33%	47.67%	47.77%	52.23%	54.43%	45.57%	29.10%	70.90%	43.52%	56.48%
5	52.56%	47.44%	56.98%	43.02%	62.57%	37.43%	37.72%	62.28%	53.83%	46.17%
6	53.90%	46.10%	55.20%	44.80%	59.93%	40.07%	42.54%	57.46%	52.44%	47.56%
7	56.76%	43.24%	60.17%	39.83%	60.40%	39.60%	49.64%	50.36%	51.33%	48.67%
8	52.95%	47.05%	55.77%	44.23%	52.69%	47.31%	44.28%	55.72%	48.65%	51.35%
9	57.46%	42.54%	58.20%	41.80%	62.89%	37.11%	39.72%	60.28%	55.56%	44.44%
10	55.49%	44.51%	68.30%	31.70%	60.13%	39.87%	42.86%	57.14%	52.88%	47.12%
11	49.08%	50.92%	63.01%	36.99%	49.26%	50.74%	31.71%	68.29%	39.41%	60.59%
12	45.79%	54.21%	39.89%	60.11%	44.57%	55.43%	20.82%	79.18%	33.83%	66.17%
13	57.57%	42.43%	55.14%	44.86%	54.07%	45.93%	41.63%	58.37%	45.23%	54.77%
14	43.75%	56.25%	33.47%	66.53%	40.36%	59.64%	15.90%	84.10%	28.70%	71.30%
15	49.08%	50.92%	52.04%	47.96%	54.81%	45.19%	38.63%	61.37%	48.16%	51.84%
16	60.08%	39.92%	62.92%	37.08%	64.60%	35.40%	54.74%	45.26%	65.22%	34.78%
17	58.26%	41.74%	60.34%	39.66%	60.82%	39.18%	41.05%	58.95%	54.61%	45.39%
18	56.17%	43.83%	48.23%	51.77%	55.80%	44.20%	30.29%	69.71%	47.46%	52.54%
19	58.00%	42.00%	59.56%	40.44%	63.18%	36.82%	45.72%	54.28%	58.66%	41.34%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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, NORMA JEAN VIETH, and SUSAN FUREY,	:	CIVIL NO. 1:CV-01-2439
Plaintiffs	:	
v.	:	
COMMONWEALTH OF PENNSYLVANIA, *et al.*,	:	
Defendants	:	

ORDER

IT IS HEREBY ORDERED THAT Defendants' renewed motion for stay pending appeal of order granting declaratory judgment and injunction is **GRANTED**, as follows:

(1) Upon consideration of Defendants' renewed motion for stay, the stay is **GRANTED**. Defendants will be allowed to conduct only the 2002 Congressional elections using Act 1;

(2) A hearing is scheduled for the purpose of determining whether Act 34 suitably remedies the constitutional violation found by this court in its order of April 8, 2002. Said hearing shall occur at **9:30 a.m. on Wednesday, May 8, 2002,** in Courtroom No. 2, Ninth Floor, Federal Building, Third and Walnut Streets, Harrisburg, Pennsylvania.

/s/ Sylvia H. Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: April 23, 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, NORMA JEAN VIETH, and SUSAN FUREY,	:	CIVIL NO. 1:CV-01-2439
Plaintiffs	:	
v.	:	
COMMONWEALTH OF PENNSYLVANIA, *et al.*,	:	
Defendants	:	

ORDER

Currently before the court are the following motions: (1) Plaintiffs' motion to impose remedial districts and in the alternative to reject Act 34 and begin remedial hearings; (2) Senator Robert Mellow's motion to stay; and (3) Defendants' motion to present evidence at the remedial hearing. Having considered the arguments, **IT IS HEREBY ORDERED THAT:**

(1) Senator Mellow's motion to stay is **DENIED**;

(2) Defendants' motion to present evidence at the remedial hearing is **GRANTED IN PART and DENIED IN PART**, as follows:

> (A) Defendants will be allowed to present the following evidence at the hearing:

(i) An affidavit from Kathleen A. Sullivan, Executive Director of the Legislative Data Processing Center, including documentation of the population database upon which Act 34 was based;

(ii) Certified copies of the Armstrong County Court of Common Pleas docket in No. 2002-00081 and the documents reflected in the docket entries:

(iii) Copies of the Legislative Journals for the Senate and House from April 15 and 17, 2002 which contain debate on Act 34; and

(iv) Copies of the biography of Congressmen John Murtha, appearing on his official website, www.house.gov/murtha, on October 4, 2002.

(B) Defendants will not be allowed to present the affidavit of James Scahill, Chairman of the Armstrong County Board of Commissioners.

(3) The parties shall present oral argument regarding the constitutionality of Act 34 before the three-judge panel at **10:00 a.m. on Thursday, January 9, 2002**, in Courtroom No. 1, Ninth Floor, Federal Building, Third and Walnut Streets, Harrisburg, Pennsylvania. The hearing shall conclude no later than 4:30 p.m. that day.

/s/ Sylvia H Rambo
SYLVIA H. RAMBO
United States District Judge

Dated: November 7, 2002

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

RICHARD VIETH, NORMA JEAN VIETH, and SUSAN FUREY,	:	CIVIL NO. 1:CV-01-2439
Plaintiffs	:	
v.	:	
COMMONWEALTH OF PENNSYLVANIA, *et al.*,	:	
Defendants	:	

ORDER

The background of this order is as follows: By an order dated April 8, 2002, the court declared that the Act 1 congressional redistricting plan violated the constitutional requirement of one person-one vote. As a remedial measure, the Commonwealth of Pennsylvania enacted Act 34. Following several continuances of this matter, the court issued an order on November 7, 2002 setting a hearing for oral argument to take place on January 9, 2003 regarding whether Act 34 appropriately remedied Act 1's constitutional flaws. On December 20, 2002, Defendants filed a motion for summary judgment. Accordingly, **IT IS HEREBY ORDERED THAT:**

(1) The hearing regrading Act 34 will take place, as scheduled, on January 9, 2003 at 10 a.m. in Courtroom No. 1, Ninth Floor, the Federal Building, Third and Walnut Streets in

Harrisburg, Pennsylvania.

(2) Plaintiff's shall file their brief in response to Defendants' motion for summary judgment no later than January 7, 2003.[1]

(3) The parties should be prepared to present oral argument on Defendants' motion for summary judgment at the hearing on January 9, 2003.

/s/ Sylvia H. Rambo
SYLVIA H. RAMBO
United States Dsitrict Judge
on behalf of the Panel

Dated: December 30, 2002

[1]The parties are reminded that they must serve all pleadings on all three judges on the panel.